

**COMMONWEALTH SITE READINESS PROGRAM
TECHNICAL ASSISTANCE TO PUBLIC ENTITY
RECOVERABLE GRANT AGREEMENT**

This Memorandum of Agreement (the “Agreement”) dated this ____ day of _____, ____ (the “Effective Date”), between MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, a Massachusetts body politic and corporate established and existing under Chapter 23G of the Massachusetts General Laws, having its principal place of business at 99 High Street, Boston, Massachusetts 02110 (“MassDevelopment”), and [NAME OF MUNICIPALITY], a Massachusetts municipal corporation having a mailing address at [Street, Municipality, State Zip] (the “Recipient”).

RECITALS

WHEREAS, the Site Readiness Program (“the Program”) was created pursuant to *An Act Relative to Job Creation and Workforce Development, 2016 Mass. Acts c. 219, § 2A* (the “Enabling Legislation”) to fund site assembly, site assessment, predevelopment permitting and other predevelopment marketing activities that enhance a site’s readiness for commercial, industrial or mixed use development;

WHEREAS, at MassDevelopment’s January 12, 2017 Board of Directors meeting, the Board voted to approve guidelines for the Program and to authorize Agency staff to solicit applications for grants for the Program;

WHEREAS, the Recipient desires to improve site readiness at [SITE ADDRESS] (the “Site”);

WHEREAS, this Agreement is entered into for the public purpose, consistent with the Enabling Legislation and the Program’s guidelines, of assisting the Recipient in [efforts of Recipient that MassDevelopment involvement will advance] to improve site readiness at the Site (the “Project”);

WHEREAS, the Recipient and MassDevelopment agree that [CONSULTANT NAME] and other pre-approved subcontractors (collectively, the “Consultant Team”) will provide certain services in connection with the Project as further described in Exhibit A attached hereto and made part hereof (the “Services”); and

WHEREAS, the Recipient and MassDevelopment intend by this Agreement to establish clearly articulated responsibilities expressly agreed upon by both parties.

TERMS

NOW, THEREFORE, in consideration of the mutual promises set forth herein and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. MassDevelopment's Obligations.

(a) MassDevelopment, in collaboration with the Recipient, shall retain, manage, and oversee the performance by the Consultant Team of the Services, and MassDevelopment shall provide staff time reasonably necessary in connection therewith (the "MassDevelopment Services").

(b) MassDevelopment, in collaboration with the Recipient, shall cause the Consultant Team to perform the Services in a professional, competent, and timely manner.

(c) MassDevelopment shall attend any necessary meetings or Site visits with the Recipient and the Consultant Team.

(d) MassDevelopment shall allocate and expend up to [\$_____] in the delivery of the Services, exclusive of the expenses and costs of its staff time (the "MassDevelopment Funds"). The amount of the MassDevelopment Funds actually disbursed that have not already been repaid to MassDevelopment are referred to as the "Disbursed Funds".

2. Recipient's Obligations.

(a) The Recipient shall provide all reasonable cooperation, access, consents, data, and such other assistance as may be necessary to facilitate the diligent performance of the Services and MassDevelopment's oversight of the Consultant Team.

(b) As necessary, the Recipient shall promptly review and comment upon the Consultant Team's work product.

(c) The Recipient shall provide MassDevelopment and the Consultant Team with a single point of contact (the "Point Person", identified below) who shall be responsible for: (i) providing any and all assistance as may be reasonably required; (ii) providing access to the Site; (iii) providing plans, maps, by-laws, rules, regulations, votes, data and other documentation regardless of form, and any other information reasonably requested; (iv) attendance at and facilitation and sponsorship of meetings, hearings, etc., as may be reasonably requested, including, without limitation, any necessary advertising and coordinating; (v) working with and seeking the cooperation of private property owners; (vi) working with third-party consultants or other parties providing services pursuant to this Agreement; and (vii) providing prompt review and comment on any deliverables, as may be necessary. The Point Person for the Recipient shall be: **[NAME, TITLE]**. Notwithstanding the above, those records which are voluminous may be made available to the Consultant Team in the Recipient's offices during normal business hours.

(d) The Recipient shall reimburse MassDevelopment for the Disbursed Funds as follows:

- (i) If the Site or any portion thereof is sold, conveyed, gifted, demised, ground leased, otherwise transferred, or refinanced, and as a result, Recipient, or any affiliate, receives funds that exceed the aggregate amount necessary for repayment of existing monetary liens, mortgage

loans, and other debt on the Project and all of the costs incurred by them in the acquisition, development, ownership, and sale of the Site or of the portion of the Site transferred (the “Net Proceeds”), then Recipient shall reimburse MassDevelopment the full amount of the Net Proceeds, in an amount up to the Disbursed Funds. This Section 2(d)(i) shall only apply from the Effective Date established above through 11:59 P.M. on the date 30 years thereafter, but shall survive the earlier expiration or termination of this Agreement.

- (ii) Beginning in the fiscal year when any Economic Benefit to the Municipality (as hereinafter defined) is realized, the Recipient shall include in its annual budget a line item requiring payment to MassDevelopment of an amount equal to 15% of any Economic Benefit to the Municipality, until the earlier of: (A) full repayment of the Disbursed Funds (whether pursuant to this Section 2(d)(ii) or Section 2(d)(i) above), (B) the expiration of 30 years from the date on which the first Economic Benefit to the Municipality is realized, or (C) if no redevelopment on the Site commences, the expiration of 30 years from the Effective Date. This Section 2(d)(ii) shall survive the expiration or termination of this Agreement.
 - (iii) For the purposes of this Agreement, “Economic Benefit to the Municipality” means any increase in the annual property tax and/or other municipal revenues for the Site, attributable to the Project or Project-related development, above the Baseline Value (as hereinafter defined). The “Baseline Value” means the amount of property tax and related tax revenue assessed by the [City/Town of _____] on the Site in the fiscal year of the Effective Date, such amount having been calculated by the [City/Town of _____] and determined to be \$ _____ (the “Baseline”).
- (e) The Recipient hereby promises to repay the Disbursed Funds in accordance with the foregoing terms and conditions. Recipient further agrees to execute and enter into any and all documents that reaffirm the terms and conditions of this section, as reasonably requested by MassDevelopment, and as relates to the Disbursed Funds and any accrued interest thereon and Recipient’s obligations hereunder. Attached hereto as **Exhibit B** is a commitment letter from the Recipient agreeing to the foregoing reimbursement obligations.
- (f) The Recipient shall meet with MassDevelopment staff and/or its consultants on, at least, a monthly basis, during the period when the Services are being performed or as MassDevelopment reasonably requests thereafter. The Recipient’s Project Manager (as identified in Section 4) shall assist MassDevelopment and its consultants in accessing the assistance of other municipal agencies or staff, as necessary. The Recipient shall work diligently with MassDevelopment in coordinating and resolving any issues that may arise in connection with the Project.

(g) For five years from the Effective Date, the Recipient shall provide biannual update reports to MassDevelopment that include Project goals, updates, timelines, Net Proceeds, and Economic Benefit to the Municipality; the biannual reports are due on or before June 1 and December 31 of each calendar year. After the expiration of five years from the Effective Date, the Recipient shall provide annual reports, with the same information referenced above, to MassDevelopment, on December 31 of each year, until the earlier of: (i) the date MassDevelopment has been fully reimbursed for the Disbursed Funds or (ii) the date the Agreement has expired.

3. Contracts with Third Parties. In retaining, managing, and overseeing the performance by the Consultant Team of the Services, MassDevelopment, with the prior consent of the Recipient, may contract or subcontract with third parties, consistent with any applicable procurement laws, rules, or regulations, for goods and services, permitting services, urban design services, and other consulting services for all activities that MassDevelopment deems necessary or desirable in the course of performing the Services.

4. Project Personnel. Both MassDevelopment and the Recipient have designated the following persons to serve as Project Manager to support effective communication between MassDevelopment and the Recipient and to report on the Project's progress:

For MassDevelopment:

For Recipient:

Name: _____
Telephone: _____
Email: _____@massdevelopment.com

Name: _____
Telephone: _____
Email: _____

5. Ownership and Use of Materials. All materials produced by MassDevelopment, including, without limitation, disks, plans, specifications, reports, manuals, pamphlets, and articles, shall be the property of MassDevelopment, and shall appropriately designate MassDevelopment as the owner. MassDevelopment shall make these materials available to the Recipient for economic development purposes.

6. Term. The term of this Agreement shall commence upon the Effective Date established above and shall expire at 11:59 P.M. on the date 30 years thereafter.

7. Survival. The provisions of this Agreement, which expressly or by their nature survive expiration or termination of this Agreement will remain in effect after the termination of this Agreement.

8. Compliance with Laws. In connection with this Agreement, MassDevelopment shall, and shall require all of its employees, contractors, and agents to, comply with all federal, state, and local laws, regulations, rules, ordinances, and orders of any kind which are applicable to MassDevelopment's performance of the Services.

9. MassDevelopment Liability.

- (a) In no event shall MassDevelopment be held liable with respect to:
- (i) any contract entered into with a third party by the Recipient relating to the subject matter of this Agreement or otherwise;
 - (ii) any recommendations, proposals, suggestions, comments, or actions taken or omitted in connection with this Agreement, unless MassDevelopment is grossly negligent; or
 - (iii) any work performed by any contractor as part of the Services provided under this Agreement.

(b) MassDevelopment shall have no obligation to perform, or have performed, any work described in the Services with internal staff resources, nor shall MassDevelopment be obliged to incur any costs if the Recipient shall unreasonably fail to provide MassDevelopment with material information necessary to deliver the work described in the Services.

(c) MassDevelopment shall have no obligation to perform, or have performed, any particular work described in the Services if it determines, in its sole discretion, that doing so is beyond the scope of this Agreement or is otherwise inadvisable or impractical.

10. Assignability. The parties agree not to assign any rights or interests arising under this Agreement or make any person a third party beneficiary of this Agreement, without obtaining, on each occasion, the prior consent of the other party, which consent may be withheld for any reason or for no reason, in such party's sole and absolute discretion.

11. Nature of Relationship; Independent Contractor.

(a) The parties acknowledge that MassDevelopment is providing services solely for public purposes as set forth herein and that no agency, partnership, joint venture or other ownership relationship is intended to be or is created by this Agreement, and, except as is expressly set forth herein, MassDevelopment shall act as an independent contractor pursuant to this Agreement.

(b) MassDevelopment's participation in this Agreement in no way obligates any further action or financial assistance by MassDevelopment with respect to the Project or the Recipient.

(c) MassDevelopment understands that it has no authority to make or imply any commitments which are binding upon the Recipient.

(d) The parties understand and agree that the ultimate feasibility or economic viability of the Project, or any other project arising out of this Agreement is not being guaranteed or assured by MassDevelopment or the Recipient. Notwithstanding the foregoing, the parties acknowledge they have a special relationship with a duty of loyalty and a duty to act in good

- (i) At any time, upon the mutual written agreement of MassDevelopment and the Recipient;
- (ii) At the option of MassDevelopment, for any reason or no reason, upon no less than 60-days' written notice to the Recipient; or
- (iii) By either MassDevelopment or the Recipient, upon the other party's failure to perform or observe any of its obligations under this Agreement (a "Default"), after a period of 30 days or the additional time, if any, that is reasonably necessary to promptly and diligently cure such failure, after such defaulting party receives notice from the non-Defaulting party setting forth in reasonable detail the nature and extent of the failure and identifying the applicable provisions of this Agreement.

(b) Upon notice of a Default under this Agreement, the non-defaulting party shall have no further obligation to the defaulting party under this Agreement until and unless the default is cured.

(c) Upon an event of Default under this Agreement beyond any applicable grace period, this Agreement shall be terminated. In the event of such termination, MassDevelopment shall pay the Consultant Team for any unpaid amounts of their respective pro rata shares.

13. Publicity. Each of the parties agree not to make, issue, or cause to be made, press releases or other publicity concerning this Agreement or the Project, without the prior consent of the other parties.

14. Exculpation. There shall be absolutely no personal liability on the part of MassDevelopment or the Recipient or on the part of any of its/their employees, agents, subcontractors, invitees or guests for monetary damages with respect to terms, covenants, and conditions of this Agreement; this exculpation of personal liability is to be absolute and without exception.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict-of-law rules.

16. Entire Agreement. This Agreement supersedes all earlier letters, conversations, purchase orders, proposals, memoranda and other written and oral communications, and it contains all the terms agreed on by the parties, with respect to the subject matter hereof, and no changes in, additions to, or subtractions from, this Agreement will be binding on the parties unless in writing and signed by MassDevelopment and the Recipient.

17. Limitation of Rights. Nothing contained herein shall be construed to confer upon any person other than the parties hereto any rights, remedies, privileges, benefits, or causes of action to any extent whatsoever.

18. Authority to Enter Agreement. Each signatory to this Agreement represents and warrants to the other that it has full power, and has taken all necessary action, to authorize the execution, delivery, and performance of this Agreement, and this Agreement constitutes the legal, valid, and binding obligation of such party enforceable in accordance with its terms.

19. Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable the remainder of this Agreement or the application thereof to any circumstance other than that to which it is invalid or unenforceable shall not be affected thereby.

20. Counterparts: Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by electronic means shall be as effective as delivery of a manually executed counterpart of this Assignment. Any party delivering an executed counterpart of this Agreement by electronic means also shall deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

21. Dispute Resolution. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall in the first instance be the subject of informal negotiations between the [*Identify the Relevant Official*] and the Executive Vice President-Real Estate for MassDevelopment, who shall use their respective best efforts to resolve such dispute. In the event that the parties cannot resolve a dispute by such informal negotiations, the parties agree to submit the dispute to mediation. Within 45 days following the date on which the dispute was first identified, the parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request the American Arbitration Association to appoint a mediator. The mediation shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The parties shall be responsible for equal shares of the costs associated with locating and obtaining the services of a mediator (the "Mediation Costs"). The period for mediation shall commence upon the appointment of the mediator and shall not exceed 30 days, unless such time period is modified by mutual agreement. In the event that (i) the actual Mediation Costs exceed \$5,000, or (ii) the period for mediation exceeds the 30-day period specified above, then either party shall have the option to withdraw from all mediation proceedings without penalty, and the parties may seek redress in whatever forum may be available to them under applicable law. Notwithstanding the foregoing, in the event that the nature of the parties' dispute is such that one or both parties are likely to suffer irreparable harm, such party or parties may seek immediate judicial relief without resorting to the mediation process described above.

*[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.
THE NEXT PAGE IS THE SIGNATURE PAGE.]*

EXECUTED as a sealed instrument as of the Effective Date.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

Approved as to Form
Agency Counsel

By: _____
Name:
Title:

[NAME OF RECIPIENT]

By: _____
Name:
Title:

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B

CONTENT OF COMMITMENT LETTER

[NAME OF MUNICIPALITY], a Massachusetts municipal corporation having a mailing address at [STREET, MUNICIPALITY, STATE ZIP] (the “Municipality”) wishes to express support for [PROPOSED PROJECT], which will pertain to the property located at [STREET, MUNICIPALITY, STATE ZIP] (the “Site”). It is the opinion of the Municipality that assistance through the Commonwealth Site Readiness Program, administered by the Massachusetts Development Finance Agency (“MassDevelopment”), would prepare the site for market and provide significant public benefits, described below.

[PLEASE CLEARLY ARTICULATE THE PROPOSED PROJECT’S PUBLIC PURPOSE AND BENEFIT:]

[IN ONE PARAGRAPH, IF SUPPORTIVE ZONING IS NOT CURRENTLY IN PLACE, PROVIDE A STATEMENT AFFIRMING THE MUNICIPALITY’S COMMITMENT TO SEEK SUPPORTIVE ZONING. AS-OF-RIGHT ZONING IS PREFERRED BUT SPECIAL PERMIT ZONING IS ACCEPTABLE. DESCRIBE THE PROCESS THROUGH WHICH SUPPORTIVE ZONING WILL BE PURSUED.]

In signing this letter of support, the Municipality agrees to comply with the applicable terms of the form grant agreement included in the Request for Proposals issued by MassDevelopment dated February 17, 2017. Specifically, the Municipality commits to obtain a vote of the [MUNICIPALITY’S GOVERNING BODY], beginning in the fiscal year when any Economic Benefit to the Municipality (as hereinafter defined) is realized, in the form substantially similar to the **Sample Vote** attached hereto.

“Economic Benefit to the Municipality” is defined as any increase in the annual property tax and/or other municipal revenues for the Site (including but not limited to nonprofit PILOT revenue, local hotel- or restaurant-tax revenue, and new local revenues derived from municipally-owned redevelopment projects) attributable to development of the Site above the Baseline Value of the property (as hereinafter defined). The “Baseline Value” means the amount of property tax and related tax revenue assessed by the City/Town of [NAME OF MUNICIPALITY] on the Site in the fiscal year of the execution of the Grant Agreement, such amount having been calculated by the municipality and determined to be \$[AMOUNT] (the “Baseline”).

The signatory to this letter represents and warrants to MassDevelopment that it has full power, and has taken all necessary action, to authorize the execution, delivery, and performance of this letter, and this letter constitutes the legal, valid, and binding obligation of such party enforceable in accordance with its terms.

[MUNICIPALITY]

By: _____
Name:
Title:

EXHIBIT B-1

SAMPLE VOTE

***[SAMPLE -- ACTUAL VOTE WILL DIFFER BASED ON MUNICIPALITY'S BYLAWS
AND CIRCUMSTANCES OF THE GRANT]***

RESOLUTION IN SUPPORT OF THE SITE READINESS GRANT FOR

WHEREAS, the land located at [ADDRESS] (the "Site") has been deemed a site suitable for the site assessment program administered by the Massachusetts Development Finance Agency ("MassDevelopment");

WHEREAS, [NAME OF MUNICIPALITY], a Massachusetts municipal corporation having a mailing address at [STREET, MUNICIPALITY, STATE ZIP] ("Municipality") has been awarded a site readiness recoverable grant in the amount of \$ _____ from MassDevelopment (the "Recoverable Grant") for readiness assistance related to the Site (the "Project");

WHEREAS, the Recoverable Grant was formalized through a grant agreement dated [DATE] entered into by and between the Municipality and MassDevelopment (the "Grant Agreement"); and

WHEREAS, the Municipality has agreed to repay the Recoverable Grant.

NOW, THEREFORE, the [NAME OF MUNICIPAL AUTHORITY] votes as follows:

If the Site or any portion thereof is sold, conveyed, gifted, demised, ground leased, or otherwise transferred, or refinanced, and as a result of said transaction, the Recipient receives funds that exceed the aggregate amount necessary for repayment of existing monetary liens, mortgage loans, and other debt on the Project and all of the costs incurred by them in the acquisition, development, ownership, and sale of the Site or of the portion of the Site transferred (the "Net Proceeds"), then Recipient shall reimburse MassDevelopment the full amount of the Net Proceeds up to the amount of the Recoverable Grant that has been disbursed and has not already been repaid to MassDevelopment (the "Disbursed Funds").

Beginning in the fiscal year when any Economic Benefit to the Municipality (as hereinafter defined) is realized, the Recipient shall include in its annual budget a line item requiring payment to MassDevelopment of an amount equal to 15% of any Economic Benefit to the Municipality, until the earlier of: (i) full repayment of the Disbursed Funds, (ii) the expiration of 30 years from the date on which the first Economic Benefit to the Municipality is realized, or (iii) if no redevelopment on the Site commences, the expiration of 30 years from the date of the Grant Agreement.

For the purposes of this vote, "Economic Benefit to the Municipality" means any increase in the annual property tax and/or other municipal revenues for the Site (including but not limited to nonprofit PILOT revenue, local hotel- or restaurant-tax revenue, and new local revenues derived from municipally-owned redevelopment projects) attributable to development of the Site above the Baseline Value of the property (as hereinafter defined). The "Baseline Value" means the amount of property tax and related tax revenue assessed by the City/Town of _____ on the Site in the fiscal year of the Grant Agreement, such amount having been calculated by the municipality and determined to be \$ _____ (the "Baseline").

[INSERT NECESSARY CERTIFICATIONS]