

801 CMR: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

801 CMR 51.00: GENERATING NEW STATE TAX REVENUES AND LOCAL TAX REVENUES  
BY STIMULATING SUSTAINABLE ECONOMIC DEVELOPMENT THROUGH  
INFRASTRUCTURE IMPROVEMENTS

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51.01: Authority, Purpose, and Application

801 CMR 51.00 is promulgated, pursuant to St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17, and St. 2012, c. 238, §§ 60 through 63, for the purpose of setting the process and requirements for approval of an Economic Development Proposal, as described in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17. The purpose of St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17, is to stimulate sustainable, economic development through Public Infrastructure Improvements and to generate new state tax revenues and local tax revenues as a result. St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, creates a program under which the Massachusetts Development Finance Agency may issue Bonds to finance Public Infrastructure Improvements associated with a certified Economic Development Project. A project must be approved by the Municipality in which it is to be located, by the Secretary of Administration and Finance and by the Massachusetts Development Finance Agency.

The Commissioner of Revenue has also issued guidance under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17, and St. 2012, c. 238, §§ 60 through 63, set forth in *Technical Information Release 08-18*, which revoked and replaced *Technical Information Release 06-26*. Further guidance will be issued to address subsequent changes in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.

801 CMR 51.00 applies to all Developers and Municipalities seeking approval of an Economic Development Proposal to be funded under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.

51.02: Definitions

Unless otherwise provided in 801 CMR 51.00, terms shall have the meanings assigned to them in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17. The following terms shall have the following meanings or, if such terms have been assigned meanings in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17, and St. 2012, c. 238, §§ 60 through 63, the following modified meanings in addition to the meanings so assigned:

51.02: continued

Annual Certification of New State Tax Revenues, the annual certificate the Commissioner is required to make to the Secretary and the Treasurer pursuant to St. 2006, c. 293, § 10(a) regarding the Commissioner's determination of the New State Tax Revenues generated with respect to each Project Component in the prior fiscal year of the Commonwealth, which annual certificate shall be issued in accordance with 801 CMR 51.00 and the DOR Guidance and shall clearly identify, for the prior fiscal year of the Commonwealth: the total state tax revenues generated from each Project Component; the portion of such state tax revenues that constitutes New Revenues from each Project Component, including the Annual Data and Displacement Factors upon which such determination is based; the portion of any such New Revenues that constitutes Dedicated Revenue from each Project Component; the New State Tax Revenues generated from each Project Component; the Shortfall amount, if any, with respect to each Project Component; the cumulative New State Tax Revenues with respect to each Project Component for all prior fiscal years of the Commonwealth; and a statement as to whether the cumulative New State Tax Revenues with respect to an Project Component equal or exceed the Net Debt Service on the Bonds allocable to the Project Component.

Annual Data, the data that the Owner of each Project Component is required to submit to the Department pursuant to the DOR Guidance in order for the Commissioner to determine the New Revenues and New State Tax Revenues for the prior fiscal year of the Commonwealth and to issue the Annual Certification of New State Tax Revenues.

Application Fee, a fee in the amount of \$50,000 payable by the Developer to the Commonwealth upon the filing of a Preliminary Economic Development Proposal with the Secretary for administrative costs of the Secretary, the Department and the Agency related to the evaluation and processing of the Preliminary Economic Development Proposal.

Bond Anticipation Notes or "BANs", bonds or notes issued to fund Project Costs maturing no later than the date of expected substantial completion of the Project Component or two years, whichever is sooner, for which all interest and other costs are to be paid by the Developer, and principal is to be refunded from the proceeds of permanent long-term financing.

Bond Issuance Fee, a fee payable by the Developer to the Agency upon the issuance of the Bonds for the Agency's role as the issuer of the Bonds; the amount of such fee shall be determined by the Agency in accordance with the fee schedule it customarily uses in connection with the issuance of bonds.

Bonds, includes, all bonds issued by the Agency pursuant to 801 CMR 51.00, without limitation, including Bond Anticipation Notes and refunding bonds issued to refinance Bond Anticipation Notes or bonds issued to finance Costs of Public Infrastructure Improvements.

Commitments, written commitments from prospective tenants or purchasers of all or a portion of a Project Component that the Developer has provided to the Secretary and that the Secretary determines, in his or her sole discretion, to be sufficient evidence of the prospective tenants' or purchasers' commitment to lease for the specified term or to purchase all or a portion of a Project Component. New State Tax Revenue projected during a lease for less than ten years shall only count as projected New State Tax Revenues during the term of the lease. New State Tax Revenue projected during a lease of ten years or longer shall count as projected New State Tax Revenues during the term of the lease and shall also serve as the basis for, and shall be taken into account in, projecting New State Tax Revenue from the Project Component which shall be counted through the term of the Bonds. If there is a compelling reason in connection with the facts related to a specific development to believe that a lease commitment of less than ten years but not less than five years resulting in New State Tax Revenues is indicative of the level of New State Tax Revenues that will be generated from the related Project Component following the term of the lease, the Secretary may, in his or her discretion, direct the Commissioner to assume the same level of projected New State Tax Revenues from the related Project Component following the lease term through the term of the Bonds.

51.02: continued

Convention Center District, the convention center finance district, as defined in St. 1997, c. 152, § 2, and the Springfield civic and convention center finance district, as defined in St. 1997, c. 152, §10b½.

Cost of Project, Project Costs and Costs, the costs of Public Infrastructure Improvements to be funded from proceeds of Bonds which may include any of the costs identified in the statutory definition that are identified by the Developer in its proposal, including costs of issuing the Bonds and costs of acquisition of land prior to approval which are directly related to and needed for the Public Infrastructure Improvements, but the Secretary shall not approve any proposal that includes interest on the Bonds as a cost to be financed by the Bonds. The Secretary shall not approve costs incurred prior to the approval of any proposal by the Secretary unless:

- (a) these costs were incurred after September 7, 2006;
- (b) sufficient evidence is provided to the Secretary showing that the costs incurred prior to approval are preliminary costs directly related to the planning or design of the proposed Public Infrastructure Improvements or the acquisition of land directly related to and needed for such Public Infrastructure Improvements; and
- (c) compelling evidence is provided that the Economic Development Project would not happen or would not happen to the same extent without the financing provided under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.

Displacement Factors, discount factors to be used in calculating New Revenues and New State Tax Revenues to adjust for any estimated reduction in revenues resulting from jobs and commercial activity in the Commonwealth that are indirectly displaced as a result of new commercial activity within the Economic Development District, which factors shall be determined by the Commissioner of Revenue based on the Independent Consultant Analysis and in accordance with the DOR Guidance.

DOR Guidance, Any *Technical Information Release* or any other guidance issued by the Commissioner pursuant to St. 2006, c. 293, § 12.

Eligible New Job, shall not include any job that directly replaces a job elsewhere in the Commonwealth, as determined in accordance with 801 CMR 51.00 and the DOR Guidance, or the retention of any job in the Commonwealth, except in circumstances where the Developer provides compelling evidence that the job would have been relocated outside of the Commonwealth if the Economic Development Project were not carried out.

Growth District, a geographic area designated as such by the Executive Office of Housing and Economic Development for purposes of coordinating an effort among the Commonwealth, the Municipality and property owners to pre-permit the area to expedite commercial and residential development within the area.

Independent Consultant Analysis, an analysis of an independent expert or experts in real estate development feasibility, market and economic impacts of development and estimating construction costs with respect to the cost of the Economic Development Project, including the Public Infrastructure Improvements, the feasibility of the Economic Development Proposal, the Displacement Factors recommended for the various Project Components and the New Revenues and New State Tax Revenues to be generated as a result of the Economic Development Proposal.

Infrastructure Development Assistance Agreement, the agreement required pursuant to St. 2006, c. 293, § 8, as amended by St. 2008, c. 129, §§ 8 and 9.

Municipality, includes only the city or town or those cities or towns within which all or a portion of the Economic Development District is located, and does not include any city or town wholly outside of the Economic Development District even if Public Infrastructure Improvements adjacent to the Economic Development District and related to the Economic Development Project are located in whole or in part in the city or town.

51.02: continued

Municipal Liquidity Reserve, the liquidity reserve the Municipality is required to establish for each Assessment Parcel pursuant to St. 2006, c. 293, § 7, as amended by st. 2008, c. 129, §§ 5 through 7, and St. 2012, c. 238, §§ 60 through 62, and in accordance with 801 CMR 51.12 and 51.13.

Net Debt Service, the Debt Service payable on the Bonds or on any portion thereof, as the context requires, less:

- (a) any Shortfall Payments previously made to the Commonwealth with respect to the payment of any portion of such Debt Service previously due and payable; and
- (b) any infrastructure assessments collected and paid to the Commonwealth with respect to the payment of any portion of such Debt Service due and payable on any of the Bonds prior to the related Project Component being certified as an Occupied Project Component.

New Revenue.

- (a) shall not include any revenue that would have been realized by the Commonwealth if a Certified Economic Development Project had not been carried out under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, including any revenue resulting from commercial activity that has been or is expected to be relocated from elsewhere in the Commonwealth to the Economic Development District and from commercial activity that is indirectly displaced as a result of new commercial activity within the Economic Development District, all as determined in accordance with 801 CMR 51.00 and the DOR Guidance; and
- (b) shall be net of any revenue that the Commonwealth realized from commercial activity or jobs located in the Economic Development District in the fiscal year prior to the filing of the Economic Development Proposal or the fiscal year prior to the Developer's acquisition of the property, whichever fiscal year yielded more revenue to the Commonwealth from the property as determined in accordance with the DOR Guidance, that has been or will be displaced as a result of the Project and not relocated elsewhere in the Commonwealth.

New State Tax Revenue, as defined in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, shall include not more than 50% of any New Revenue attributable to construction-related activity and purchases in connection with the Economic Development Project, and, in any given fiscal year, the amount of construction-related New State Tax Revenue derived from a Project Component shall not exceed 50% of annual Debt Service allocable to the Project Component.

Occupied Project Component, a Project Component that the Developer certifies to the Secretary and to the Agency has been completed and is occupied by tenants or an Owner at a level equal to or greater than the minimum level of occupancy for the Project Component established under the Infrastructure Development Assistance Agreement in accordance with St. 2006, c. 293, § 9. Such minimum level of occupancy shall not be established at a level that would result in projected New State Tax Revenues generated from the Project Component at that minimum occupancy level being less than the Debt Service payable on the related Bonds. New State Tax Revenue attributable to construction-related activity and purchases shall be allocated among all Occupied Project Components in any fiscal year on a *pro rata* basis based on the portion of the Bonds allocable to such Occupied Project Components. Both the Commonwealth and the Municipality shall have a right of review and an opportunity to contest any determination that a Project Component is occupied. Each shall be given 30 days to inspect the Project Component and to review related commitments regarding occupancy to confirm that the Project Component is in fact an Occupied Project Component as provided for in the Infrastructure Development Assistance Agreement. If either the Commonwealth or the Municipality challenges the Developer's certification of an Occupied Project Component, the Agency shall have the right to inspect and make the final decision and certification as to whether or not the Project Component is in fact an Occupied Project Component. Once a Project Component has been certified as an Occupied Project Component, it shall thereafter always be considered an Occupied Project Component.

Owner, the current property taxpayer for an Assessment Parcel.

51.02: continued

Phased Project, an Economic Development Project that the Developer proposes to be approved and completed in phases and that is contained within one contiguous Economic Development District, includes at least one Commercial Component and one Public Infrastructure Improvement in each phase of the Project, and constitutes a single Economic Development Project for all purposes of St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00.

Preliminary Approval Letter, the letter of the Secretary approving the Preliminary Economic Development Proposal under 801 CMR 51.08.

Preliminary Certificate of the Agency, the certificate of the Agency regarding estimated Costs of the Project that may be supported by New State Tax Revenues under 801 CMR 51.06.

Preliminary Certificate of the Commissioner, the certificate of the Commissioner regarding estimated New State Tax Revenues and other matters pursuant to 801 CMR 51.07 and the DOR Guidance.

Preliminary Economic Development Proposal, the preliminary proposal required to be submitted to the Secretary, the Agency, the Municipal Officers and the Commissioner prior to filing the Economic Development Proposal with the Municipality as described in 801 CMR 51.06.

Project Component, not more than one Commercial Component of an Economic Development Project, located on not more than one Assessment Parcel, and exclusive of any Public Infrastructure Improvements.

Shortfall, the amount certified by the Commissioner in the Annual Certification of New State Tax Revenues by which Debt Service on Bonds allocable to an Occupied Project Component in any fiscal year of the Commonwealth exceeded the amount of New State Tax Revenues derived from the Occupied Project Component in that fiscal year, less the sum of:

- (a) any New State Tax Revenues on any other Occupied Project Component that exceeded the Debt Service allocable to such other Occupied Project Component in that fiscal year that is available to reduce this amount plus;
- (b) the portion of the cumulative amount of the New State Tax Revenues received through the prior fiscal year of the Commonwealth that exceeded the cumulative amount of the Net Debt Service due and payable on the Bonds through said prior fiscal year that has been transferred to the Agency and not yet used or legally committed to defease or pay a portion of the Bonds. The cumulative construction-related New State Tax Revenue used or legally committed through the current fiscal year shall not exceed 50% of cumulative Debt Service due and payable on any of the Bonds through said current fiscal year.

Sustainable Development Principles, the sustainable development principles in 801 CMR 51.18.

51.03: Criteria for Approval of an Economic Development Proposal by the Secretary

In order for an Economic Development Proposal to receive the Secretary's approval, the following criteria must be met:

- (1) The Economic Development Proposal must provide all information and materials required by St. 2006, c. 293 §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00 in form satisfactory to the Secretary.
- (2) The Economic Development Proposal must provide to the Secretary's satisfaction evidence that:
  - (a) the Economic Development Project would not happen or would not achieve the level of development, jobs or other economic activity contemplated by the Economic Development Proposal without the Public Infrastructure Improvements and the financing of all or a portion of the Public Infrastructure Improvements pursuant to St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63;
  - (b) the Economic Development Project is financially feasible;

51.03: continued

- (c) the Economic Development Project is consistent with Sustainable Development Principles;
  - (d) the annual New State Tax Revenues expected to be received by the Commonwealth from each Occupied Project Component will be at least 1.5 times the projected annual Debt Service on the Bonds allocable to such Occupied Project Component from and after the date on which it is projected to become an Occupied Project Component;
  - (e) the Developer will use a competitive process for selecting a qualified contractor or contractors for the construction of the Public Infrastructure Improvements to ensure timely and quality construction and cost effectiveness;
  - (f) the Developer has sufficient resources or financing commitments to carry out the Economic Development Project or, if the Developer is seeking approval of the Economic Development Project as a Phased Project, to carry out the phase of the Economic Development Project for which the Developer is seeking approval, excluding the Costs of Public Infrastructure Improvements expected to be funded by the Agency under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63;
  - (g) the Economic Development Project, or, if the Developer is seeking approval of the Economic Development Project as a Phased Project, the phase of the Economic Development Project for which the Developer is seeking approval, is reasonably likely to commence in a timely manner following approval of the Economic Development Project or the related phase thereof; and
  - (h) the preconditions to the Secretary's approval of an Economic Development Project identified in St. 2006, c. 293, § 7(c), as amended by St. 2008, c. 129, § 6, have been met.
- (3) (a) There have been not more than two other Economic Development Projects approved under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, in the Municipality;
- (b) The Economic Development Project would not cause the aggregate amount of I-Cubed financing under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, provided to projects in the Municipality to exceed 31% of the I-Cubed financing total caplimit on aggregate principal amount of bonds; and
- (c) The Economic Development Project was not approved by the Municipality prior to September 7, 2006.
- (4) The Project has not received and will not receive other public assistance prohibited by St. 2006, c. 293, § 11(b), as amended by St. 2008, c. 129, §§ 13 and 14, and following the effective date of 801 CMR 51.00, the Developer shall not apply for any other state infrastructure assistance funded by the Commonwealth for infrastructure improvements in the Economic Development District until any Bonds issued for Public Infrastructure Improvements therein are no longer outstanding unless the Secretary shall approve of the Developer applying for such other state infrastructure assistance. For this purpose, state infrastructure assistance does not include financing by Municipalities under the District Improvement Financing program or through the Local Infrastructure Development Program. For purposes of St. 2006, c. 293, § 11(b), as amended by St. 2008, c. 129, §§ 13 and 14, a certified Economic Development Project may be designated as a Tax Increment Financing (TIF) zone on or after January 1, 2009, under M.G.L. c. 40, § 59, provided that the Developer or any Owner, or any affiliate thereof, may not participate in or benefit from any economic assistance resulting from any such designation on or after January 1, 2009; provided further, however, that the Developer or any Owner may be a party to a TIF agreement or other application or request by a tenant seeking economic assistance in connection with any such TIF zone for the limited purpose of meeting the requirements of any statute, regulation or requirement for such tenant to be eligible, but any real estate tax, investment tax credit or other benefits from such TIF agreement or participation in a tenant's application or request shall be passed onto the tenant exclusively.
- (5) The cost of all of the Public Infrastructure Improvements to be funded with proceeds of the Bonds shall not exceed \$50 million and shall not be less than \$5 million.

51.03: continued

(6) The Economic Development Proposal has been approved by the Municipality and the Agency.

(7) The Preliminary Economic Development Proposal has been approved by the Secretary.

51.04: Priority of Projects

(1) Among Economic Development Proposals that satisfy the criteria set forth in 801 CMR 51.03, the Secretary shall give highest priority to projects in Economically Distressed Municipalities in which both the unemployment rate and median income criteria of St. 2006, c. 293, § 7, as amended by St. 2008, c. 129, § 7(e) and St. 2012, c. 238, § 62, are met. The unemployment rates used for this purpose shall be the average rates for the 12 months prior to the Secretary's issuance of the Preliminary Approval Letter, as calculated by the Executive Office of Labor and Workforce Development. The median income levels used for this purpose shall be the median family income levels published by the U.S. Census Bureau in its most recent publication of these rates prior to the Secretary's issuance of the Preliminary Approval Letter.

(2) The Secretary shall give second highest priority to Economic Development Proposals in Economically Distressed Municipalities in which either the unemployment rate or the median income criteria of St. 2006, c. 293, § 7, as amended by St. 2008, § 7(e) and St. 2012, c. 128, § 62, is met.

(3) The Secretary shall otherwise give preference to Economic Development Proposals that:

- (a) are located in Growth Districts;
- (b) commit to becoming at least LEED Silver certifiable for each Project Component from the U.S. Green Building Council under the Leadership in Energy and Environmental Design Green Building Rating System;
- (c) include Public Infrastructure Improvements that have been previously contemplated and desired by the Commonwealth or its agencies; or
- (d) that include Public Infrastructure Improvements that are reasonably likely to make other sites available for future economic development projects. These criteria will be weighed equally, and proposals satisfying more than one criterion will receive additional preferential consideration, but none of these criteria are required to be satisfied in order to be eligible for project approval.

51.05: Secretary's Discretion

Notwithstanding 801 CMR 51.03 and 51.04, the Secretary, in his or her sole discretion, reserves the right to waive or conditionally waive any of the criteria identified in 801 CMR 51.00 that are not statutorily required by St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, if the Secretary determines that there are compelling reasons to do so, and the Secretary reserves the right to reject any Economic Development Proposal.

51.06: Preliminary Economic Development Proposal

(1) Prior to filing an Economic Development Proposal with a Municipality in accordance with St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, a Developer shall file a Preliminary Economic Development Proposal with the Secretary, the Municipal Officers, the Agency and the Commissioner and shall submit a check to the Secretary for the payment of the Application Fee. Trade secrets and financial information submitted by the Developer in connection with the submission of a Preliminary Economic Development Proposal and with the submission of an Economic Development Proposal shall be kept confidential by all parties receiving such information to the extent required or permitted by law.

(2) The Preliminary Economic Development Proposal shall include the following:

- (a) Legal name, contact information, personnel, description, and relevant experience of the Developer.

51.06: continued

- (b) References and the contact information of other government officials, if any, with whom the Developer has dealt in connection with similar development projects.
- (c) If the Economic Development Proposal is expected to be owned or carried out by more than one Developer, items listed in 801 CMR 51.06(2)(a) and (b) for each Developer and an explanation of their relationship, their respective ownership interests and their respective roles in carrying out the Economic Development Proposal.
- (d) Boundaries of the proposed Economic Development District, including:
  - 1. a textual description of the boundaries and a map showing boundaries;
  - 2. identification of the existing parcels of real property located within the proposed district;
  - 3. identification of the current Owner of each parcel, and, to the extent any of the parcels are not currently owned by the Developer, evidence that the Developer has a reasonable expectation of acquiring the parcels not currently owned by the Developer and the expected cost of acquiring these parcels;
  - 4. identification of the proposed Assessment Parcels upon which the different Project Components will be developed; and
  - 5. identification of the proposed Public Infrastructure Improvements.
- (e) Description of the Proposed Economic Development Project, including:
  - 1. each building, facility or other improvement to be constructed on each Project Component;
  - 2. the square footage of each building to be used as a commercial facility, and the expected allocation of the square footage among different types of commercial activity, and descriptions of the expected specific commercial uses of this square footage;
  - 3. the number of condominium or apartment residential units to be included in any proposed residential facility, and the number of such units to be restricted as affordable to individuals and families with incomes at or below 80% of area-wide median income levels;
  - 4. Public Infrastructure Improvements;
  - 5. any zoning amendments or relief that will be required to carry out the Proposed Economic Development Project and the status thereof; and
  - 6. any known environmental or other permitting that will be required to carry out the Project and the status thereof.
- (f) A detailed itemization of:
  - 1. the projected cost of each Project Component and the expected sources of financing available to fund such costs; and
  - 2. the projected costs of each Public Infrastructure Improvement and the expected sources of financing available to fund such costs, including any funding being requested under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63. The itemization shall include financial statements or written financing commitments demonstrating that expected sources of financing are available for the project, or include a detailed explanation of the reasons any such financing sources have not yet been secured and the basis for believing they will be secured prior to the Secretary's approval of the Economic Development Proposal.
- (g) A detailed timeline for approval and completion of the Economic Development Project, including:
  - 1. the expected date of municipal approval;
  - 2. the expected date of final approval by the Secretary and the Agency;
  - 3. the expected dates of commencement of construction and completion of each Project Component and the fiscal year Project Cost cash flows for each Project Component;
  - 4. the expected dates of commencement of construction and completion of each Public Infrastructure Improvement and the fiscal year Project Cost cash flows for each Public Infrastructure Improvement; and
  - 5. the expected dates of commencement and completion of any other construction-related activity to be undertaken in connection with the Economic Development Project. If the Developer is seeking approval of the Economic Development Project as a Phased Project, the detailed timeline must also clearly identify the different proposed phases of the Economic Development Project, including the Project Components and Public Infrastructure Improvements to be completed in each phase, and the expected dates of commencement and completion of each phase.



51.06: continued

(h) Written evidence that the Economic Development Project would not happen or would not achieve the level of development, jobs or other economic activity contemplated by the Preliminary Economic Development Proposal without the Public Infrastructure Improvements and without the financing of all or a portion of the Cost of such Public Infrastructure Improvements under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.

(i) For each Project Component, the total number of jobs expected to be supported in each industry expected to be located at the Project Component and the expected average wage for each job in each such industry, the total retail sales activity by dollar volume and the total hotel rooms, projected room rates and projected daily occupancy levels, and the total number of construction jobs expected to be supported at each Project Component and for the Public Infrastructure Improvements, the expected average wage for each construction job and the amount expected to be spent for the purchase of construction materials in the Commonwealth for each Project Component and the Public Infrastructure Improvements, all with reference to recent government or industry sources used as the basis for the projections or to the actual experience, estimate or commitment of expected tenants or Owner of the Project Component.

(j) The Developer's estimate of the appropriate Displacement Factors for each Project Component, together with any data or explanation the Developer can offer to support such estimate.

(k) For each Project Component and based on 801 CMR 51.00, the DOR Guidance, the Commitments, and the Developer's estimate of the appropriate Displacement Factors for each Project Component, estimates of total state tax revenues, New Revenues and New State Tax Revenues to be generated from each Project Component of the Economic Development Project. For the purposes of these estimates, the Developer shall state the assumptions it is making with respect to the extent to which any portion of any Project Component for which the Developer does not yet have a Commitment will be leased or purchased by an entity that will or will not be relocating to the Economic Development District from elsewhere in the Commonwealth.

(l) Projected Debt Service schedule for financing of the Public Infrastructure Improvements, both in the aggregate and segregated by allocable Project Component, which is structured based on the following assumptions and parameters:

1. a total principal amount equal to the portion of the Cost of the Public Infrastructure Improvement requested to be funded under St. 2006, c. 293 §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and may include estimated costs of issuance of the Bonds up to 3% of said amount;
2. a minimum interest expense of 5%, payable semi-annually beginning in the fiscal year of the Commonwealth following the fiscal year in which the Bonds are issued;
3. issuance date or dates not more than three years prior to the expected completion of the related Public Infrastructure Improvements or portions thereof being financed with proceeds of the Bonds;
4. maximum term of 30 years from date of issuance;
5. principal amortization which:
  - a. results in annual Debt Service payments allocable to each Project Component after completion of the related Project Component that are not less than the annual Debt Service payable with respect to such Project Component in any subsequent year; and
  - b. annual Debt Service payments allocable to each Project Component in any year prior to completion of the related Project Component that is at least equal to the total interest due and payable on the Bonds allocable to such Project Component.

(m) Any Commitments for any of the Project Components, together with a written statement as to whether any of the prospective tenants or purchasers making such Commitments are relocating jobs or commercial activity from elsewhere in the Commonwealth and whether any jobs being relocated from elsewhere within the Commonwealth to the Economic Development District would be relocated outside of the Commonwealth if the Economic Development Project were not carried out, including any compelling evidence supporting such an assertion that the Developer is able to provide. The Developer shall also produce a written description of the Developer's marketing efforts and the status of any active negotiations with potential tenants or purchasers.

51.06: continued

- (n) Written description of the proposed transfer of property interests in the Public Infrastructure Improvements after they have been completed. If the Public Infrastructure Improvements are expected to be conveyed to a governmental entity other than the Municipality, a vote of the legislative body or governing board of the governmental entity with the power to accept property on behalf of the governmental entity authorizing the acceptance of the Public Infrastructure Improvements and of responsibility for maintaining the same in the event that the Economic Development Proposal is approved by the Secretary.
- (o) Written statement of interest from the Municipal Officers confirming their preliminary support for the proposed Economic Development Project and their preliminary interest in pursuing the approval of the Economic Development Project by the Secretary, the Agency and the Municipality.
- (p) Certification of the Developer confirming that:
1. the proposed Economic Development Project was not approved by the Municipality prior to September 7, 2006; and
  2. the Developer has not received or applied for, and will not apply for, any public assistance for the project prohibited under St. 2006, c. 293, § 11(b), as amended by St. 2008, c. 128, §§ 13 and 14; and
  3. following the effective date of 801 CMR 51.00, the Developer has not applied and will not apply for any other public assistance funded by the Commonwealth for infrastructure improvements within the Economic Development District until any Bonds issued for Public Infrastructure Improvements therein are no longer outstanding, unless the Secretary approves of the Developer's applying for such other state infrastructure assistance.
- (q) A description of each of the commercial establishments and residential facilities located within the proposed Economic Development District during the fiscal year prior to the application for funding under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and, if the Developer owns all or a portion of the property within the district, in the fiscal year prior to the Developer's acquisition of such property, whether any of such establishments or facilities are expected to remain within the district following the proposed Economic Development Project and the plans for relocating any of such establishments or the place of relocation of any of such establishments that have already been relocated, and the estimated amount of any state tax revenue generated from each of such commercial establishments in the prior fiscal year and in the fiscal year prior to the Developer's acquisition of such property, if applicable, together with the basis for such estimates.
- (r) Written evidence that the Economic Development Project shall conform to the general plan for the Municipality as a whole and any master plan for all or any portion of the Economic Development District, and an opinion of counsel to the Developer confirming that the Economic Development Project shall conform with all applicable zoning, planning, land use, environmental and other laws and regulations of the Commonwealth and of the Municipality.
- (s) A description of the methodology for the allocation of Debt Service to each Assessment Parcel and for the calculation of any infrastructure assessments to be levied by the Municipality upon each Assessment Parcel in the Economic Development Project, or the manner of determining such methodology. The methodology may include allocation by length of frontage, or type of Project Component, including classification of Assessment Parcels among residential, commercial, industrial and open space uses, or by square footage of an Assessment Parcel or an Economic Development Project, or according to the value of the Assessment Parcel as determined by the assessor or assessors, or by such other method as the assessor or assessors of the Municipality determine will fairly allocate the Costs of the Public Infrastructure Improvements financed by the Bonds to the real estate in the Economic Development District, which may also include allocating Debt Service and assessing in proportion to the New State Tax Revenue projected to be generated from the Assessment Parcel. Prior to the Secretary's issuance of a Preliminary Letter of Approval, the Secretary must also receive written evidence of the Municipal Officers' and the Municipality's assessor's or assessors' approval of the proposed methodology for the allocation of Debt Service to each Assessment Parcel and, if necessary, of the aforesaid determination of the assessor or assessors of the Municipality. In the event that the methodology proposed requires the aforesaid determination of the assessor or assessors of the Municipality, the Secretary shall not issue a Preliminary Approval Letter until receiving written evidence of such determination by the assessor or assessors.

## 51.06: continued

- (t) A statement as to whether the Developer will agree to have Assessment Parcels assessed to reimburse the Municipality for all or any portion of any Local Development Infrastructure Assistance payments the Municipality is required to make to the Commonwealth with respect to any Shortfall between Debt Service and New State Tax Revenues after the related Project Component has become an Occupied Project Component, or a description of any agreements made between the Developer and Municipality for the same purpose.
- (u) A written description of the extent to which the Economic Development Proposal is consistent with the Sustainable Development Principles.
- (v) A statement as to whether the proposed Economic Development Project is located in an Economically Distressed Municipality or a Growth District, and, if it is, any supporting information or evidence thereof.
- (w) A written description of the Developer's proposed competitive process for selecting a contractor or contractors for the construction of the Public Infrastructure Improvements to ensure timely and quality construction and cost effectiveness.
- (x) A written statement, together with supporting information or evidence, as to whether:
  1. the Developer is committed to make each Project Component at least LEED certifiable;
  2. any of the Public Infrastructure Improvements have been previously contemplated and designed by the Commonwealth or any of its agencies; or
  3. any of the Public Infrastructure Improvements are reasonably likely to make other sites available for economic development projects.
- (y) A written description of the Developer's plan to secure the obligations of its selected contractor or contractors to complete each of the Project Components and the Public Infrastructure Improvements with payment, performance and lien bonds which, in the case of the Public Infrastructure Improvements being funded in whole or in part from the proceeds of the Bonds, provide for the Developer and the Agency to be co-obligees under such bonds, and to secure its own obligation to complete the portion of the Public Infrastructure Improvements not funded by Bonds under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, or to provide other security satisfactory to the Secretary.
- (z) If all or any portion of the proposed Economic Development Project is located in a Convention Center District, a written statement of preliminary support for the proposed Economic Development Project from the Executive Director of the Massachusetts Convention Center Authority and confirmation of his or her preliminary support for transferring the New State Tax Revenues deposited in the Convention Center Fund to the General Fund in accordance with St. 1997, c. 152, § 10(c)(vi).
- (aa) Any other reasonable information or documentation that the Secretary, the Municipal Officers, the Agency or the Commissioner requests.

51.07: Process for Preliminary Approval

- (1) Within 30 days after receipt of the Preliminary Economic Development Proposal, the Secretary or his or her designee shall host a meeting with the Developer, Municipal Officers, the Commissioner and the Agency to review the proposal and identify any information required to be submitted by the Developer that was not previously submitted. At the meeting, the Developer will be informed whether, based on a preliminary review of the proposal and the criteria for approval of projects set forth in 801 CMR 51.00, the Secretary rejects the proposal and the reasons therefor, or whether the Secretary agrees to proceed with an evaluation of the Preliminary Economic Development Proposal before making a determination as to whether to grant a Preliminary Approval Letter. If the proposal is rejected at that time, the Application Fee will be returned to the Developer. If the Secretary agrees to proceed, the parties will agree at the meeting to a preliminary schedule for:
  - (a) meetings;
  - (b) submission of additional information or documentation by the Developer;
  - (c) Independent Consultant Analysis;
  - (d) issuance of the Preliminary Certificate of the Commissioner;

51.07: continued

- (e) issuance of the Preliminary Certificate of the Agency; and
- (f) decision by the Secretary as to whether she will grant a Preliminary Approval Letter.

(2) The Developer shall promptly provide any information required to be submitted to or reasonably requested by the Secretary in connection with the Preliminary Approval process.

(3) An Independent Consultant Analysis of the Preliminary Economic Development Proposal shall be conducted. The Secretary shall engage the independent consultant for the Independent Consultant Analysis pursuant to state law, and the Developer shall be responsible for paying all costs of the Independent Consultant Analysis. The Secretary or a designee shall oversee the work of the consultant, with participation of the Commissioner, the Municipal Officers and the Agency. The Developer shall cooperate with the consultant and shall provide the consultant with such reasonable information regarding the proposed Economic Development Project as is necessary to inform and to expedite the Independent Consultant Analysis. Any previously commissioned independent consultant analyses or other market research information or financial analyses conducted by or on behalf of the Municipality or the Developer shall be provided to, and taken into by, account by the consultant retained by the Secretary.

(4) If the Independent Consultant Analysis or other information results in a determination by the Commissioner that New State Tax Revenues will be materially different from the estimates included in the Preliminary Economic Development Proposal, the Secretary may request that the Developer, in consultation with the Municipal Officers, Secretary, Commissioner, Agency and independent consultant, submit a revised Preliminary Economic Development Proposal.

(5) Based on the Preliminary Economic Development Proposal and the Independent Consultant Analysis, the Commissioner shall issue a Preliminary Certificate of the Commissioner regarding the estimated New State Tax Revenues that will result from the Preliminary Economic Development Proposal. The Preliminary Certificate of the Commissioner shall be prepared in accordance with the DOR Guidance and shall clearly identify, for each fiscal year of the Commonwealth through the expected final payment of the Bonds: the total state tax revenues expected to be generated from each Project Component; the portion of such state tax revenues that is expected to constitute New Revenues from each Project Component, including the information or assumptions about relocation of commercial activity, Eligible New Jobs, the Displacement Factors and the other relevant information upon which the estimate of New Revenues is based; the portion of any such projected New Revenues that constitutes Dedicated Revenue; the estimated New State Tax Revenues from each Project Component; and the estimated state tax revenues to be generated from construction activity related to the Economic Development Project. This Preliminary Certificate of the Commissioner shall state any conditions that must be satisfied or assumptions that must be confirmed prior to final certification, including the additional Commitments that will be required from prospective tenants or purchasers that will result in Eligible New Jobs.

(6) Based on the Preliminary Economic Development Proposal, the Independent Consultant Analysis and the Preliminary Certificate of the Commissioner, the Agency shall issue a Preliminary Certificate of the Agency as to the estimated Project Costs for the Public Infrastructure Improvements and the portion of such Project Costs that can be supported by the estimated New State Tax Revenues identified in the Preliminary Certificate of the Commissioner, using a 1.5 times annual coverage ratio. The *pro forma* Debt Service on the Bonds shall be structured in a manner consistent with the requirements of 801 CMR 51.06(12). If the Developer is seeking approval of the Economic Development Project as a Phased Project, the Preliminary Certificate of the Agency shall also provide the same information with respect to the initial phase of the Economic Development Project for which the Developer is seeking approval. This Preliminary Certificate of the Agency shall state any conditions that must be satisfied or assumptions that must be confirmed prior to final approval of the Economic Development Proposal by the Agency.

51.08: Preliminary Approval of Secretary

- (1) If, based on the Preliminary Economic Development Proposal, the Preliminary Certificate of the Commissioner and the Preliminary Certificate of the Agency, the Secretary determines that the Preliminary Economic Development Proposal is eligible for approval and that it is reasonably likely that the contemplated Economic Development Proposal will satisfy the criteria for approval identified in 801 CMR 51.03, the Secretary may issue a Preliminary Approval Letter.
- (2) Any Preliminary Approval Letter shall state all conditions that must be satisfied prior to final approval of the contemplated Economic Development Proposal. If the Developer is seeking approval of the Economic Development Project as a Phased Project, the Preliminary Letter of Approval shall also state all conditions that must be satisfied prior to final approval of each phase of the Economic Development Project.
- (3) Any Preliminary Approval Letter shall incorporate by reference the related Independent Consultant Analysis, the Preliminary Certificate of the Commissioner confirming the estimated state tax revenues, New Revenues and New State Tax Revenues to be realized from the Economic Development Project and the Preliminary Certificate of the Agency confirming the estimated Project Costs for the Public Infrastructure Improvements that may be supported by New State Tax Revenues in accordance with 801 CMR 51.00.
- (4) The Preliminary Approval Letter shall state the portion of the Project Costs for the Public Infrastructure Improvements eligible for final approval based on the Preliminary Certificate of the Agency.

51.09: Content of Economic Development Proposal Submitted for Municipal Approval

The content of the Economic Development Proposal submitted to the Municipality shall be the same as the Preliminary Economic Development Proposal, as revised prior to receipt of the Preliminary Approval Letter or as required to satisfy any of the conditions stated in the Preliminary Approval Letter, and shall include the Preliminary Approval Letter, the Preliminary Certificate of the Commissioner, the Preliminary Certificate of the Agency and the Independent Consultant Analysis.

51.10: Municipal Approval

- A Developer shall seek formal approval by the Municipality in accordance with of St. 2006, c. 293, § 7(b), as amended by St. 2008, c. 129, § 5. The approval by the Municipality shall:
- (a) explicitly approve the Economic Development Proposal, acknowledge the financial obligations the Municipality would be assuming in connection with the approval, and, if the approval is conditioned upon any changes to the Economic Development Proposal, the municipal approval shall clearly identify any such changes;
  - (b) approve any required zoning changes to accommodate the Economic Development Proposal;
  - (c) approve the creation of a Municipal Liquidity Reserve for each Assessment Parcel in accordance with St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00, including the funding of each reserve, or the authorization required to fund each reserve prior to the issuance of the Bonds; and
  - (d) approve the acquisition or acceptance of any property interests in the Public Infrastructure Improvements to be conveyed to the Municipality upon completion.

51.11: Economic Development Proposal Submitted to Secretary and Agency for Approval

Upon receiving municipal approval, a Developer and the Municipality shall jointly file an Economic Development Proposal with the Secretary and the Agency for their approval. Any such Economic Development Proposal submitted to the Secretary and the Agency for approval must be submitted not later than 60 days following the date of the related municipal approval.

51.12: Content of Application to Secretary and Agency for Approval of Economic Development Proposal

The application for final approval of an Economic Development Proposal shall include:

- (1) The Economic Development Proposal. The content of the Economic Development Proposal submitted to the Secretary and the Agency for approval shall be the same as the Economic Development Proposal submitted to the Municipality, but if the Municipality's approval was conditioned on any changes to the Economic Development Proposal, the Economic Development Proposal submitted to the Secretary shall reflect these changes.
- (2) An opinion of counsel to the Municipality confirming that:
  - (a) the Municipality approved the Economic Development Proposal in accordance with the requirements of St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00; and
  - (b) the Economic Development Project is permitted under the applicable zoning laws.
- (3) Certified copies of the votes of the Municipality approving the Economic Development Proposal in accordance with St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00 and of the minutes of the public hearing required by St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and the notice of the public hearing.
- (4) Evidence that the Developer owns each of the parcels of real property within the Economic Development District described in the Economic Development Proposal, or owns sufficient interests therein to carry out the Economic Development Project.
- (5) Any Commitments obtained by the Developer since the Developer's submission of the Preliminary Economic Development Proposal that were not previously submitted to the Secretary, together with a written statement as to whether any of the prospective tenants or purchasers making such Commitments are relocating jobs or commercial activity from elsewhere in the Commonwealth and whether any jobs being relocated from elsewhere in the Commonwealth to the Economic Development District would be relocated outside of the Commonwealth if the Economic Development Project were not carried out, including any compelling evidence supporting such an assertion that the Developer is able to provide. The final certifications of the Commissioner as to the estimated New Revenues and New State Tax Revenues pursuant to 801 CMR 51.13(2)(b), and the final approvals of the Secretary and the Agency of the Economic Development Proposal, shall be based only on New Revenues and New State Tax Revenues anticipated from all or any portion of each Project Component for which Commitments have been provided by the Developer.
- (6) Evidence that the Developer has sufficient equity and financing commitments to fund all of the Costs of the Economic Development Project, or all of the Costs of the phase of the Economic Development Project for which the Developer is seeking approval if it is a Phased Project, except any of such Costs expected to be funded by the Agency under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, based on the Preliminary Approval Letter, which evidence shall be satisfactory to the Secretary. This shall include evidence of the commitment of the Developer's construction lender, on terms and conditions acceptable to the Secretary, to advance loan proceeds on the Developers behalf to pay for the costs of completing Public Infrastructure Improvements that are not being funded from proceeds of the Bonds, notwithstanding whether or not the construction lender's loan with the Developer is in default, or such other security or assurance as may be acceptable to the Secretary.
- (7) If the Municipal Liquidity Reserve for any Assessment Parcel is to be funded by the Municipality or by an equity contribution from the Developer or any other third party:
  - (a) evidence that the amount required to be deposited in the Municipal Liquidity Reserve has been transferred into the Reserve; or

## 51.12: continued

(b) an enforceable commitment from the Developer or the third party to the Municipality to transfer this amount into the Reserve prior to the issuance of the Bonds by the Agency. If the Municipal Liquidity Reserve for any Assessment Parcel is to be funded by a surety bond, insurance policy, or other credit facility, the application shall include a written commitment from a provider of any such credit facility that is rated AA or higher by at least two nationally recognized rating agencies to provide such credit facility prior to the issuance of the Bonds by the Agency in the amount required by St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00 and in form satisfactory to the Secretary providing for direct payment to the Commonwealth in the event of a failure by the Developer to pay all or any portion of an infrastructure assessment when due and payable or by the Municipality to pay all or any portion of a local infrastructure development assistance payment when due and payable. If the Municipality is paying the premium for any such credit facility, the municipal approval must clearly authorize the payment of the premium, and if the Developer or any other third party is paying the premium for any such credit facility, the Developer must provide an enforceable commitment from the Developer or such other third party to the Municipality to pay the premium. If the Economic Development Project is a Phased Project, the requirements of 801 CMR 51.12(7) shall only apply to the Municipal Liquidity Reserve for each Assessment Parcel that is a part of the phase of the Economic Development Project for which the Developer is seeking approval.

(8) If all or a portion of the Economic Development Project is located in a Convention Center District and the Economic Development Proposal makes the financing of the Public Infrastructure Improvements dependent in whole or in part on New State Tax Revenues that will be deposited in the Convention Center Fund, an agreement among the Secretary, the Developer and the Massachusetts Convention Center Authority providing for the transfer of the required amounts of such New State Tax Revenues from the Convention Center Fund to the General Fund in accordance with St. 1997, c. 152, § 10(c)(vi).

(9) If the Developer seeks a waiver or partial waiver of any requirements necessary for the Secretary's Approval of an Economic Development Proposal for the purpose of issuance of Bond Anticipation Notes, the Developer must submit evidence of a letter of credit or other security for the repayment of the Developers' obligations under the Infrastructure Development Assistance Agreement acceptable to the Secretary.

51.13: Process for Approval of Economic Development Proposal

(1) Within 60 days of receipt of the Economic Development Proposal from the Developer and the Municipality in the form and with the information and documentation required by St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and by 801 CMR 51.00, the Secretary shall take action on the Proposal by approving it, disapproving it, requesting its amendment or requesting further information.

(2) Prior to approving any Economic Development Proposal, and, if the Economic Development Project is a Phased Project, prior to approving any phase of any Economic Development Project for which the Developer is seeking approval, the Secretary must have received or provided the following:

(a) An updated Independent Consultant Analysis to take into account any difference between the Economic Development Proposal and the Preliminary Economic Development Proposal and any changes in facts or assumptions since the original Independent Consultant Analysis. The updated Independent Consultant Analysis should be conducted and paid for in the same manner and by the same parties as the original Independent Consultant Analysis.

(b) An updated version of the Preliminary Certificate of the Commissioner to reflect any changes in the Economic Development Proposal filed by the Developer and the Municipality from the Preliminary Economic Development Proposal and the updated Independent Consultant Analysis and to reflect only the New Revenues and New State Tax Revenues projected to be generated from Project Components for which Commitments have been obtained. If the Economic Development Project is a Phased Project, the updated version of the Certificate shall address only the phase of the Economic Development Project for which the Developer is seeking approval.

## 51.13: continued

(c) An updated version of the Preliminary Certificate of the Agency to reflect any changes in the Economic Development Proposal filed by the Developer and the Municipality from the Preliminary Economic Development Proposal, the Independent Consultant Analysis and the updated version of the Preliminary Certificate of the Commissioner. If the Economic Development Project is a Phased Project, the updated version of the Certificate shall address only the phase of the Economic Development Project for which the Developer is seeking approval.

(d) Certification of the Agency confirming that the Agency has reviewed the documentation provided by the Developer to demonstrate that the Developer has sufficient equity and financing commitments to fund Costs of the Economic Development Project and that, based on such review and on any additional investigation or review the Agency deemed necessary, the Agency has determined that the Developer has sufficient equity and financing commitments to fund all of the Costs of the Economic Development Project or, if the Economic Development Project is a Phased Project, all of the Costs of the phase of the Economic Development Project for which the Developer is seeking approval, except any of such Costs expected to be funded by the Agency from the proceeds of the Bonds under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.

(e) Certification of the Commissioner confirming that the amount of projected annual New State Tax Revenues allocable to each of the Project Components of the Economic Development Project, or, if the Economic Development Project is a Phased Project, the phase of the Economic Development Project for which the Developer is seeking approval, following completion and occupancy thereof will be at least equal to the projected maximum annual Debt Service due on the related Bonds to be issued by the Agency following the completion and occupancy of the related Occupied Project Component as determined under 801 CMR 51.00 and identified in the certification of the Executive Director of the Agency referenced in 801 CMR 51.13(2)(c).

(f) Certification of the Agency confirming that Agency has approved the Economic Development Proposal, or, if the Economic Development Project is a Phased Project, the Economic Development Proposal with respect to the phase of the Economic Development Project for which the Developer is seeking approval.

(g) Certification of the Secretary that:

1. the Developer has funding or financial commitments satisfactory to the Secretary sufficient to fund the Costs of the Economic Development Project, or, if the Economic Development Project is a Phased Project, the phase of the Economic Development Project for which the Developer is seeking approval, exclusive of any Costs of the Public Infrastructure Improvements to be financed by Bonds to be issued by the Agency, and such commitments include the commitment of the Developer's construction lender or lenders, on terms and conditions acceptable to the Secretary, to advance loan proceeds on the Developer's behalf to pay for the costs of completing Public Infrastructure Improvements that are not being funded from proceeds of the Bonds, whether or not the construction lender's loan with the Developer is in default, or such other security or assurance as the Secretary has determined to be acceptable;
2. the Developer's plan to secure the obligations of its selected contractor or contractors to complete each of the Project Components and the Public Infrastructure Improvements with payment, performance and lien bonds which, in the case of the Public Infrastructure Improvements being funded in whole or in part from the proceeds of the Bonds, provide for the Developer and the Agency to be co-obligees under such bonds, and to secure its own obligation to complete the portion of the Public Infrastructure Improvements not funded by Bonds under this Act, or to provide other security satisfactory to the Secretary, is satisfactory to the Secretary, and the Secretary's approval of the Economic Development Proposal, or of the portion thereof that relates to the phase of the Economic Development Project for which the Developer is seeking approval if it is a Phased Project, will be made conditional upon such security having been obtained prior to the issuance of the related Bonds; and



51.13: continued

3. the Municipality has established a Municipal Liquidity Reserve for the benefit of the Commonwealth for each Assessment Parcel within the Economic Development Project, or, if the Economic Development Project is a Phased Project, for each Assessment Parcel that is a part of the phase of the Economic Development Project for which the Developer is seeking approval, and has funded or has provided for the funding of such Reserve in an amount equal to twice the total maximum annual Debt Service due on the Bonds allocable to said Assessment Parcel.
4. if the Developer seeks a waiver or partial waiver of the any requirements necessary for the Secretary's Approval of the Economic Development Proposal for the purpose of issuance of Bond Anticipation Notes, the Secretary has received evidence that the Developer has obtained a letter of credit or other security for the repayment of the Developer's obligations under an Infrastructure Development Assistance Agreement acceptable to the Secretary and that the Secretary waives any necessary requirements.

51.14: Phased Projects

If an Economic Development Project is a Phased Project, the Developer and the Municipality must provide evidence of satisfaction of the requirements identified in 801 CMR 51.12 and the requirements of 801 CMR 51.13 must be satisfied prior to the Secretary's and the Agency's approval of the portion of any Economic Development Proposal related to the phase of the Economic Development Project for which the Developer is seeking approval.

51.15: Additional Information

The Secretary may request any additional information or documentation she considers relevant to her evaluation or approval of the Economic Development Proposal, including any additional Commitments that may be required in order to confirm the estimated amount of New Revenues or New State Tax Revenues upon which any final approval of the Economic Development Proposal would be based. The Developer and the Municipality shall promptly provide any such information or documentation requested to the extent it is available.

51.16: Final Approval

If the criteria and requirements for an Economic Development Proposal set forth in St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and in 801 CMR 51.00 are satisfied, the Secretary may approve and certify the Economic Development Proposal by filing a certificate with the Department, the Agency and the Treasurer declaring the Economic Development Proposal to be a certified Economic Development Proposal. If the Economic Development Project is a Phased Project, the Secretary's approval and certification shall clearly state the phase or phases of the Economic Development Project for which such approval and certificate relate. Any approval and certification of an Economic Development Proposal shall be conditioned upon execution of the related Infrastructure Development Assistance Agreement in form consistent with St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00 and otherwise satisfactory to the Secretary and may be subject to any other conditions the Secretary determines to be necessary or desirable.

The Secretary reserves the right, in the Secretary's sole discretion, to waive any of the criteria or requirements for approval of an Economic Development Proposal stated in 801 CMR 51.00 that are not statutorily required by St. 2006, c. 293, §§ 5 through, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and the Secretary reserves the right to reject any Economic Development Proposal.

51.17: Infrastructure Development Assistance Agreement

- (1) The Secretary, Agency, Developer and Municipality shall enter into an Infrastructure Development Assistance Agreement prior to the issuance of any of the Bonds.

51.17: continued

- (2) The Infrastructure Development Assistance Agreement shall have terms and conditions consistent with the requirements of St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00, the related Economic Development Proposal and the Secretary's certification of approval of the Economic Development Proposal.
- (3) The Infrastructure Development Assistance Agreement shall set forth the finance plan for the Public Infrastructure Improvements, including the amount, structure, date or dates of issuance, security and other relevant terms of the Bonds, and it shall require that the Developer pay the Bond Issuance Fee to the Agency upon the issuance of the Bonds.
- (4) The Infrastructure Development Assistance Agreement shall authorize the Agency, upon request of the Secretary, to issue refinancing Bonds to refinance all or a portion of the Bonds originally issued to finance the Public Infrastructure Improvements. No approval of the Municipality shall be required for the issuance of refinancing Bonds unless the issuance of the refinancing Bonds would result in an increase in Debt Service in any fiscal year of the Commonwealth. Upon any refinancing of Bonds that results in a reduction of future Debt Service payments, the Infrastructure Development Assistance Agreement shall be amended to reflect such reduction in Debt Service.
- (5) The Infrastructure Development Assistance Agreement shall provide for the Commissioner to issue the Annual Certification of New State Tax Revenues by not later than December 1<sup>st</sup> in each year in accordance with St. 2006, c. 293, §§ 5 through , as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, 801 CMR 51.00 and the DOR Guidance. In order to ensure that the Commissioner has the information necessary to make the determination as to New State Tax Revenues and to issue the Annual Certification as to New State Tax Revenues by December 1<sup>st</sup> of each year, the Infrastructure Development Assistance Agreement shall require Owners of each Project Component to provide the Annual Data directly to the Commissioner by not later than August 31<sup>st</sup> of each year. In the event that the Annual Data with respect to any Project Component is not provided to the Commissioner by August 31<sup>st</sup>, the Annual Certification of New State Tax Revenues with respect to such Project Component shall state that there were no New State Tax Revenues for the prior fiscal year. The Commissioner may, in the Commissioner's sole discretion, waive the August 31<sup>st</sup> deadline if the Annual Data is provided prior to December 1<sup>st</sup> with sufficient time for the Commissioner to make the required determination as to New State Tax Revenues prior to December 1<sup>st</sup>. The Annual Data submitted to the Commissioner will be kept confidential by the Department to the extent required as permitted by law; provided that the Developer and successor Owners shall be required to waive such confidentiality in limited circumstances to permit the Secretary and the Municipal Officers to review the Annual Data as prescribed in the DOR Guidance.
- (6) In accordance with St. 2006, c. 293, § 8, as amended by St. 2008, c. 129, §§ 8 and 9 and § 10, as amended by St. 2008, c. 129, §§ 10 through 12, the Infrastructure Development Assistance Agreement shall provide that the Bonds shall be secured by a pledge of the Infrastructure Development Assistance Agreement and the rights of the Agency to receive State Infrastructure Development Assistance in accordance with St. 2006, c. 293, §§ 5 through 12 , as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and with the terms of the Infrastructure Development Assistance Agreement. The Infrastructure Development Assistance Agreement shall provide for the State Infrastructure Development Assistance to be paid to the Agency in the amounts and at the times necessary to pay the Debt Service on the Bonds when the same is due and payable. The Infrastructure Development Assistance Agreement shall provide for an administrative fee to be paid to the Agency on a one-time basis or on a periodic basis during the life of the Bonds to cover reasonable costs incurred by the Agency in connection with its ongoing responsibilities related to the Bonds.
- (7) (a) In accordance with St. 2006, c. 293, § 9 of the Infrastructure Development Assistance Agreement shall provide for the Municipality to fix and assess Infrastructure Assessments with respect to each Assessment Parcel commencing with the fiscal year of the Commonwealth following the fiscal year in which the Bonds are issued in amounts sufficient in each fiscal year to reimburse the Commonwealth for the total amount of the Debt Service payable by the Commonwealth during that fiscal year. The Infrastructure Assessments shall be assessed and collected by the Municipality and paid to the Commonwealth by not later than June 30<sup>th</sup> of the related fiscal year.

51.17: continued

(b) The methodology for calculating the amount of the Infrastructure Assessment on each Assessment Parcel provided for in the Infrastructure Development Assistance Agreement shall be consistent with the methodology set forth in the Economic Development Proposal. In the fiscal year of the Commonwealth in which a Project Component becomes an Occupied Project Component, the amount of the Infrastructure Assessment for the related Assessment Parcel shall be equal to a prorated portion of the total Debt Service on the Bonds allocable to such Assessment Parcel payable during that fiscal year based on the number of days in the fiscal year that had elapsed prior to the date on which the related Project Component became an Occupied Project Component.

(c) Pursuant to St. 2006, c. 293, § 10, as amended by St. 2008, c. 129, § 12(d), a Developer may agree in the Infrastructure Development Assistance Agreement to allow the Municipality to fix and assess Infrastructure Assessments with respect to any Assessment Parcel to reimburse the Commonwealth, or to reimburse the Municipal Liquidity Reserve or any credit facility provider thereof to the extent a draw was made by the Commonwealth against the Municipal Liquidity Reserve, to cover all or a portion of any Shortfall. Any such Infrastructure Assessment with respect to an Assessment Parcel with an Occupied Project Component shall be assessed and collected by the Municipality in the fiscal year of the Commonwealth following the fiscal year in which the related Shortfall occurred and shall be paid to the Commonwealth, or shall be applied to reimburse the related Municipal Liquidity Reserve or any credit facility provider thereof to the extent a draw was made by the Commonwealth against the Municipal Liquidity Reserve to cover all or any portion of such Shortfall, by not later than July 1<sup>st</sup> of the second fiscal year following the fiscal year of the Commonwealth in which the Shortfall occurred. Failure by the Municipality to assess and collect all or any portion of an Infrastructure Assessment to cover a Shortfall, or any failure by the Owner of the related Assessment Parcel to pay any such Infrastructure Assessment, shall not relieve the Municipality of its obligation under St. 2006, c. 293, § 10, as amended by St. 2008, c. 129, §§ 10 through 12, and 801 CMR 51.17(8) to pay Local Development Infrastructure Assistance to the Commonwealth in an amount sufficient, together with any portion of the Infrastructure Assessment that has been assessed, collected and paid to the Commonwealth or applied to reimburse the related Municipal Liquidity Reserve, to cover the Shortfall amount on or before July 1<sup>st</sup> of the second fiscal year following the fiscal year of the Commonwealth in which the Shortfall occurred.

(8) In accordance with St. 2006, c. 293, § 10, as amended by St. 2008, c. 129, §§ 10 through 12, the Infrastructure Development Assistance Agreement shall provide for the Municipality to pay Local Development Infrastructure Assistance to reimburse the Commonwealth, or to reimburse the related Municipal Liquidity Reserve or any credit facility provider thereof to the extent a draw was made by the Commonwealth against the related Municipal Liquidity Reserve, to cover all or a portion of any Shortfall with respect to any Assessment Parcel on or before July 1<sup>st</sup> of the second fiscal year following the fiscal year of the Commonwealth in which the Shortfall occurred. If the Developer has agreed to pay Infrastructure Assessments to reimburse the Commonwealth for all or any portion of a Shortfall under St. 2006, c. 293, § 10, as amended by St. 2008, c. 129, § 12(d), and 801 CMR 51.17(7), any such Infrastructure Assessments assessed and collected by the Municipality and paid to the Commonwealth or applied to reimburse the Municipal Liquidity Reserve prior to said July 1<sup>st</sup> shall be credited against the Municipality's obligation to pay Local Development Infrastructure Assistance to cover the Shortfall. Pursuant to St. 2006, c. 293, § 10(b), as amended by St. 2008, c. 129, § 11, the Infrastructure Development Assistance Agreement shall further provide that, to the extent the Municipality does not pay all or a portion of any Local Development Infrastructure Assistance due to the Commonwealth on any July 1<sup>st</sup> on which such payment is due, the Secretary shall take the necessary action to withhold the unpaid amount from the local aid amount that would otherwise be distributed by the Commonwealth to the Municipality.

(9) In accordance with St. 2006, c. 293, § 10(b) St. 2008, c. 129, § 11, and 801 CMR 51.00, once the cumulative New State Tax Revenues with respect to a Project Component equal or exceed the Net Debt Service on the Bonds allocable to such Project Component, the Municipality and the Developer shall have no further obligation to provide Local Infrastructure Development Assistance or to pay Infrastructure Assessments with respect to any of the Debt Service on such Bonds that first becomes due and payable thereafter.

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- (10) (a) The Infrastructure Development Assistance Agreement shall require that the Agency:
1. deposit any portion of the State Infrastructure Development Assistance paid in any fiscal year that is in excess of the Debt Service due and payable in such fiscal year in a redemption fund or escrow fund pledged to the payment of the Bonds;
  2. invest those amounts in permissible investments under the related bond indenture and subject to the approval of the Secretary; and
  3. apply those amounts and the investment earnings thereon to prepay Bonds in accordance with a prepayment plan approved by the Secretary.
- (b) Upon any prepayment of Bonds as a result of a prepayment of State Infrastructure Development Assistance that results in a reduction of future Debt Service payments, the Infrastructure Development Assistance Agreement shall be amended to reflect the reduced Debt Service amounts.

(11) The Infrastructure Development Assistance Agreement shall provide that the Municipal Liquidity Reserves required to be established for each Assessment Parcel under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, and 801 CMR 51.00 be held by the Municipality as segregated funds of the Municipality for the benefit of the Commonwealth. The Infrastructure Development Assistance Agreement shall further provide that each Municipal Liquidity Reserve be funded in an amount, or have a credit facility approved by the Secretary payable to the Commonwealth in an amount, equal to or greater than twice the maximum annual Debt Service on the Bonds allocable to the related Assessment Parcel. In the event that the Annual Certification of New State Tax Revenues indicates that there was a Shortfall in the prior fiscal year of the Commonwealth with respect to any Occupied Project Component, the Commonwealth shall have the right under the Infrastructure Development Assistance Agreement to require that the Municipality, or the credit facility provider, if applicable, transfer, within ten days of receipt of a written direction to that effect from the Secretary, the Municipality, or the credit facility provider, if applicable, to the Commonwealth from the related Municipal Liquidity Reserve an amount equal to such Shortfall to reimburse the Commonwealth for the portion of the State Infrastructure Development Assistance paid in the prior fiscal year that was equal to the Shortfall. In the event that the Commonwealth draws on a Municipal Liquidity Reserve to cover all or any portion of a Shortfall, the Municipality's obligation to pay Local Infrastructure Development Assistance, and any obligation of the Developer to pay Infrastructure Assessments, to reimburse the Commonwealth for such Shortfall or for the portion thereof that was drawn from the Municipal Liquidity Reserve shall be applied to reimburse the Municipal Liquidity Reserve, or the credit facility provider, if applicable, as provided in 801 CMR 51.00. The Infrastructure Development Assistance Agreement shall further provide that, following the final payment of the related Bonds, any cash-funded Municipal Liquidity Reserve shall be disposed of in either of the following ways, as provided in the Infrastructure Development Assistance Agreement:

- (a) transfer any remaining cash in the related Municipal Liquidity Reserves to the public entity that owns the infrastructure for the sole purpose of making improvements to the Public Infrastructure Improvements financed with the Bonds; or
- (b) transfer any remaining cash in the related Municipal Liquidity Reserve to the entity that originally funded the reserve.

(12) The Infrastructure Development Assistance Agreement shall provide for the plans and specifications of the Public Infrastructure Improvements to be subject to the review and approval of the Municipality, the public entity that shall own and maintain all or a portion of the Public Infrastructure Improvements if not the Municipality and the Commonwealth. The Infrastructure Development Assistance Agreement shall also provide for the Municipality, the public entity that shall own and maintain all or a portion of the Public Infrastructure Improvements if not the Municipality and the Commonwealth to have the right to inspect and monitor the construction of the Public Infrastructure Improvements. For this purpose, the Municipality, the public entity that shall own and maintain all or a portion of the Public Infrastructure Improvements if not the Municipality and the Commonwealth may jointly engage an independent engineer or other appropriate professional with expertise in the design or construction of public infrastructure similar to the Public Infrastructure Improvements (the "Independent Construction Agent"), and any such Independent Construction Agent shall be funded from proceeds of the Bonds as a Cost

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of the Public Infrastructure Improvements. The Infrastructure Development Assistance Agreement shall further provide that the Developer must requisition disbursement of proceeds of the Bonds from the Agency to pay Costs of the Public Infrastructure Improvements and that the Commonwealth, the Municipality and the public entity that shall own and maintain all or a portion of the Public Infrastructure Improvements if not the Municipality, acting through the designated Independent Construction Agent or through any designated employee or employees of the Commonwealth, the Municipality or of the public entity that shall own and maintain all or a portion of the Public Infrastructure Improvements if not the Municipality, must approve any such disbursements by the Agency.

(13) The Infrastructure Development Assistance Agreement shall require that the Developer provide evidence to the Secretary and the Municipality of having complied with the competitive procurement process for the selection of a contractor or contractors for the construction of the Public Infrastructure Improvements that was proposed by the Developer in the related Economic Development Proposal, with any modifications to the process that may have been required by the Secretary, including copies of the bid solicitation and bids submitted and written evidence that the basis of the selection made was consistent with the criteria set forth in the bid solicitation.

(14) The Infrastructure Development Assistance Agreement shall require that the Developer pay any Costs of the Public Infrastructure Improvements in excess of the amount to be funded from proceeds of the Bonds as provided in the Economic Development Proposal approved by the Secretary; provided that the Infrastructure Development Assistance Agreement may provide for the Municipality, or the public entity that shall own and maintain the Public Infrastructure Improvements if not the Municipality, to cover all or a portion of such costs.

(15) The Infrastructure Development Assistance Agreement shall require that, prior to the issuance of the Bonds, the Developer shall have caused its contractors for the Economic Development Project to have obtained payment, performance and lien bonds from providers satisfactory to the Secretary to secure the contractors' obligations to complete the construction of the Economic Development Project, or, if the Economic Development Project is a Phased Project, the related phase of the Economic Development Project, including the related Public Infrastructure Improvements, and to have provided for the Developer and the Agency to be co-obligees on any such payment, performance and lien bonds related to the Public Infrastructure Improvements being financed in whole or in part from proceeds of the Bonds payable in an amount equal to or greater than the related Bonds, or that the Developer shall have provided other security satisfactory to the Secretary as provided for in the Economic Development Proposal and in the Secretary's approval thereof.

(16) The Infrastructure Development Assistance Agreement shall require that, prior to the issuance of the related Bonds, the Developer shall enter into an agreement among the Developer, the Developer's construction lender, and the Agency on terms and conditions acceptable to the Secretary which requires the construction lender to advance loan proceeds on the Developer's behalf to pay for the costs of completing Public Infrastructure Improvements that are not being funded from proceeds of the Bonds, notwithstanding whether or not the construction lender's loan with the Developer is in default, or that the Developer shall have provided such other security satisfactory to the Secretary as provided for in the Economic Development Proposal and in the Secretary's approval thereof.

(17) In accordance with St. 2006, c. 293, § 12 as amended by St. 2008, c. 128, § 17, section 12A, the Infrastructure Development Assistance Agreement shall require that, prior to the issuance of the Bonds, the Developer certify to the Secretary and the Municipality that:

- (a) the Developer has properly classified and will at all times properly classify any individuals it employs to work on the Public Infrastructure Improvements, and it will require documentation from any contractor it engages to work on the Public Infrastructure Improvements confirming that any such contractor will properly classify individuals it employs to work on the Public Infrastructure Improvements;

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(b) the Developer has complied and will at all times comply with the all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes and income taxes with respect to all such employees, and it will require documentation from any contractor it engages to work on the Public Infrastructure Improvements confirming that any such contractor will at all times comply with these laws; and

(c) the Developer will require documentation from any contractor it engages to work on the Public Infrastructure Improvements showing that all of the employees of the contractor working on the Public Infrastructure Improvements have hospitalization and medical benefits that meet the minimum requirements of the Connector Board established in M.G.L. c. 176Q.

(18) In accordance with St. 2006, c. 293, § 6(e) of the Infrastructure Development Assistance Agreement shall provide that:

(a) the Developer shall be responsible for all costs and expenses of the Economic Development Project, including the costs of operating and maintaining all Public Infrastructure Improvements prior to their conveyance to the Municipality or to any other governmental entity designated to be the owner of the Public Infrastructure Improvements in the Economic Development Proposal, except for any Costs to be funded from proceeds of the Bonds under St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63, 801 CMR 51.00 and the Economic Development Proposal approved by the Secretary; and

(b) the Municipality, or such other governmental entity, shall be responsible for operating and maintaining the Public Infrastructure Improvements following the conveyance, provided that the Municipality or other governmental entity may contract with the Developer to operate and maintain the Public Infrastructure Improvements for the period of time following the conveyance and in accordance with such other terms and conditions as the parties shall deem appropriate and desirable. The Infrastructure Development Assistance Agreement shall set forth the terms and conditions for the conveyance. If the Public Infrastructure Improvements are to be conveyed to a governmental entity other than the Municipality, the governmental entity shall be a party to the Infrastructure Development Assistance Agreement for the purpose of the requirements of 801 CMR 51.(18)(b).

(19) Each Infrastructure Development Assistance Agreement shall include the following equal opportunity provisions:

(a) During the performance of this agreement, the Developer agrees as follows:

1. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, sexual orientation or disability. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation or disability.

3. In the event of the Developer's non-compliance with the nondiscrimination clauses of this agreement or with any of such rules, regulations, or orders, the Secretary may: fine the Developer for each instance of non-compliance; refrain from extending any further assistance to the Developer for the Public Infrastructure Improvements until satisfactory assurance of future compliance has been received from the Developer; and refer the case to the Office of the Attorney General for appropriate legal proceedings.

(b) The Developer hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, which is paid for in whole or in part with funds from State Infrastructure Development Assistance pursuant to this agreement, the following equal opportunity clause:

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During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because race, color, religion, sex, national origin, sexual orientation or disability. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, sexual orientation or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, national origin, sexual orientation or disability.
  3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under 801 CMR 51.17, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  4. The contractor will furnish all information and reports required by the assistance agreement or by the Secretary, and will permit access to his or her books, records, and accounts by the Secretary for purposes of investigation to ascertain compliance with the assistance agreement and orders of the Secretary.
  5. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, the assistance agreement or orders of the Secretary, the assistance agreement may be canceled, terminated, or suspended in whole or in part.
  6. The contractor will include the portion of the sentence immediately preceding the provisions of 801 CMR 51.17(19)(b)1. through 5. in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- (c) The Developer agrees to assist and cooperate actively with the Secretary or a designee in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the agreement and relevant orders of the Secretary, and to furnish the Secretary such information as may require for the supervision of such compliance, and to otherwise assist the Secretary in the discharge of the Secretary's responsibility for securing compliance.
- The Developer further agrees that he or she will refrain from entering into any contract or contract modification subject to the agreement, with a contractor debarred from federal or state government construction contracts. In addition, the Developer agrees that if he fails or refuses to comply with these undertakings, the Secretary may take any or all of the following actions: fine the Developer for each instance of non-compliance; refrain from extending any further assistance to the Developer for the Public Infrastructure Improvements until satisfactory assurance of future compliance has been received from such Developer; and refer the case to the Office of the Attorney General for appropriate legal proceedings."

51.18: Sustainable Development Principles

The Commonwealth of Massachusetts shall care for the built and natural environment by promoting sustainable development through integrated energy and environment, housing and economic development, transportation and other policies, programs, investments, and regulations. The Commonwealth will encourage the coordination and cooperation of all agencies, invest public funds wisely in smart growth and equitable development, give priority to investments that will deliver good jobs and good wages, transit access, housing, and open space, in accordance with the following sustainable development principles. Furthermore, the Commonwealth shall seek to advance these principles in partnership with regional and municipal governments, non-profit organizations, business, and other stakeholders.

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- (1) Concentrate Development and Mix Uses. Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources, and integrates uses. Encourage remediation and reuse of existing sites, structures, and infrastructure rather than new construction in undeveloped areas. Create pedestrian friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open spaces and homes.
- (2) Advance Equity. Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning and decision making to ensure social, economic, and environmental justice. Ensure that the interests of future generations are not compromised by today's decisions.
- (3) Make Efficient Decisions. Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship.
- (4) Protect Land and Ecosystems. Protect and restore environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open spaces and recreational opportunities.
- (5) Use Natural Resources Wisely. Construct and promote developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.
- (6) Expand Housing Opportunities. Support the construction and rehabilitation of homes to meet the needs of people of all abilities, income levels, and household types. Build homes near jobs, transit, and where services are available. Foster the development of housing, particularly multifamily and smaller single-family homes, in a way that is compatible with a community's character and vision and with providing new housing choices for people of all means.
- (7) Provide Transportation Choice. Maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality. Prioritize rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking. Invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with smart growth objectives.
- (8) Increase Job and Business Opportunities. Attract businesses and jobs to locations near housing, infrastructure, and transportation options. Promote economic development in industry clusters. Expand access to education, training, and entrepreneurial opportunities. Support the growth of local businesses, including sustainable natural resource-based businesses, such as agriculture, forestry, clean energy technology, and fisheries.
- (9) Promote Clean Energy. Maximize energy efficiency and renewable energy opportunities. Support energy conservation strategies, local clean power generation, distributed generation technologies, and innovative industries. Reduce greenhouse gas emissions and consumption of fossil fuels.
- (10) Plan Regionally. Support the development and implementation of local and regional, state and interstate plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the Commonwealth.

## REGULATORY AUTHORITY

801 CMR 51.00: St. 2006, c. 293, §§ 5 through 12, as amended by St. 2008, c. 129, §§ 2 through 17 and St. 2012, c. 238, §§ 60 through 63.