

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY
AGREEMENT FOR CONSULTING SERVICES

This Agreement for Consulting Services (the "Agreement") is made and entered into as of the _____ day of _____, 20__ (the "Effective Date"), by and between the MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, (the "Agency" or "MassDevelopment"), a Massachusetts body politic and corporate established by M.G.L. Chapter 23G, as may be amended from time to time, having a principal place of business at 99 High Street, 11th Floor, Boston, Massachusetts 02110, and _____, a _____ corporation, limited liability company, individual, having a principal place of business at _____ (the "Consultant").

WITNESSETH THAT

WHEREAS, the Agency desires to retain the Consultant to provide on-call _____ and related services, as more fully described herein; and

WHEREAS, the Consultant is qualified and desires to perform services for the Agency to meet these needs.

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

ARTICLE 1. SCOPE OF SERVICES

The Consultant shall perform services (the "Services") as further described on Exhibit A, which is attached hereto and incorporated herein by reference. The Services shall be managed by individual delivery orders for specific tasks up to the maximum value of the contract. Each delivery order will specify the scope of work, staff effort and fee, and schedule to be included to complete that task (a "Delivery Order"). Each request for Delivery Order shall remain in the sole discretion of the Agency. Services for each Delivery Order will be completed and billed as described on the Delivery Order. The Services shall be requested by the Agency on an as-needed basis from time to time during the term of this Agreement and such requests shall, at all times, remain in the sole discretion of the Agency. The Agency does not represent or otherwise guarantee that any minimum quantity or value of Services will be requested of Consultant.

ARTICLE 2. FEES

The Agency agrees to pay the Consultant fees, upon the completion of each Delivery Order, according to the fee schedule as set forth in Exhibit B and as further specified in the Delivery Order. Total fees hereunder shall not exceed _____ and 00/100 Dollars (\$ ___.00) through the date of completion of the Agreement as defined in Article 9 hereto. The "total fees" shall include all direct costs and reasonable expenses, which costs and expenses shall be approved in writing by the Agency in its sole discretion.

The Itemized records of time spent and costs incurred in the performance of the Services under the Agreement shall be kept by the Consultant on the basis of generally accepted accounting principles consistently applied and shall be submitted to the Agency along with the Consultant's monthly invoice, as specified under Article 3. All such records shall be kept by the Consultant for a period of six (6) years. All retention periods start on the first day after termination of the Agreement. If any litigation, claim, negotiation, audit or other action involving such records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the applicable retention period, whichever is later.

ARTICLE 3. PAYMENT

Invoices for services rendered and costs incurred shall be prepared by the Consultant on the Consultant's standard form, as approved by the Agency, and submitted along with the Consultants itemized records, as set forth in Article 2, to the Agency every thirty (30) days. The invoices shall reflect fees and costs for actual services performed and hours of service provided, identify the percentage of work completed and otherwise conform to the requirements of Article 2 hereof. An invoice in proper form shall be paid by the Agency to the Consultant within thirty (30) days of presentation to the Agency.

ARTICLE 4. CHANGES AND ADDITIONAL SERVICES

The Agency may request changes or additions to the Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's fees, which are mutually agreed upon between the Agency and the Consultant shall be incorporated in written amendments to the Agreement.

ARTICLE 5. INDEPENDENT CONTRACTOR

It is understood and agreed that the Consultant is an independent contractor and that the Consultant shall perform the Services as defined by the parties on Exhibit A. The Consultant shall determine, in the Consultant's sole discretion, the manner and means by which the Services are accomplished, subject to the express condition that the Consultant shall at all times comply with applicable law. The Consultant shall perform the Services in a professional and competent manner. It is expressly understood and agreed that neither the Consultant nor the Consultant's employees and agents, if any, shall be considered agents or employees of the Agency, and they shall have no authority whatsoever to bind the Agency by contract or otherwise.

The Consultant represents that it has, or will secure, at its own expense, all personnel required in performing the Services under the Agreement. The Consultant shall assign such personnel subject to the approval of the Agency, and such personnel shall not be employees of nor have any contractual relationship with the Agency. The Consultant further agrees that its personnel will not hold themselves out as, nor claim to be, officers or employees of the Agency by reason of the Agreement.

The Consultant acknowledges and agrees that it shall be the obligation of the Consultant to report to the proper authorities all fees received by the Consultant pursuant to the Agreement, and the Consultant agrees to indemnify, defend and hold harmless the Agency to the

extent of any obligation imposed by law on the Agency to pay any withholding taxes, social security, unemployment or worker's compensation insurance or similar items in connection with any payments made to the Consultant by the Agency pursuant to the Agreement on account of the Services of the Consultant or the Consultant's employees or agents, if any.

ARTICLE 6. INSURANCE

The Consultant shall effect and maintain insurance in amounts as set forth below and with companies licensed to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-,VII" and otherwise satisfactory to the Agency, at its own cost and expense to protect itself from claims under any Worker's Compensation Act; from claims for damages because of bodily injury including sickness, disease or death; from claims for damages because of injury to or destruction of tangible property; and from claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which it is legally liable.

- (i) Commercial general liability, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1,000,000 personal injury, \$1,000,000 per occurrence and \$2,000,000 general/product/completed operations aggregate;
- (ii) Automobile liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1,000,000 per occurrence combined single limit;
- (iii) Workers' compensation for all its employees, as required by statute, with employers' liability of \$500,000.00 or more including \$500,000 accident and \$500,000 disease;
- (iv) Professional liability insurance coverage with per claim limits of not less than \$5,000,000.

The Consultant shall furnish the Agency with certificates of insurance showing that the Consultant has complied with this Article prior to entering into the Agreement, which certificates shall name "**Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear**" as an Additional Insured for the insurance required under (i) and (ii) of this Article. Such certificates shall provide that written notification of cancellation of the insurance policies required hereunder shall be given to the Agency thirty (30) days prior to such cancellation.

ARTICLE 7. INDEMNITY

The Consultant shall indemnify, defend and hold harmless the Agency and its successors and assigns, and all of its officers, managers, members, directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees (collectively "Agency Indemnitees") from and against any and all claims, suits, actions, judgments, demands, losses, costs, attorney's fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of the intentional acts, negligent acts, errors, omissions, or allegations thereof, of the Consultant, its employees, agents or representatives in the performance of the Services under the Agreement.

ARTICLE 8. TIME

Upon receipt of a Delivery Order, submitted by the Agency, the Consultant shall perform the Services with due diligence and in accordance with the schedules agreed to in the Delivery Order. The Agency may authorize costs to be incurred prior to such Delivery Order. Time is of the essence under the Agreement.

ARTICLE 9. DURATION OF CONTRACT

The date of completion for the performance of Services by the Consultant under the Agreement shall be six (6) years from the Effective Date of this Agreement. The Agency, at its sole discretion, shall have the option to extend the term of this Agreement for two (2) additional one-year extensions. Notwithstanding the foregoing, the provisions where equity would require survival shall be deemed to survive and remain binding upon the parties following the termination of the Agreement.

ARTICLE 10. TERMINATION

The Agreement may be terminated by the Agency upon seven (7) days written notice to the Consultant in the event of substantial failure by the Consultant to perform in accordance with the terms of the Agreement through no fault of the Agency unless said failure is rectified within said period. The Agreement may also be terminated by the Agency for its convenience but only upon seven (7) days written notice to the Consultant.

In the event of termination not the fault of the Consultant, the Consultant shall be paid for all the Services performed and costs incurred up to the effective date of termination for which the Consultant has not been previously paid by the Agency.

Upon receipt of notice of termination from the Agency, the Consultant shall discontinue its services hereunder unless otherwise directed and shall deliver to the Agency all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in the performance of the Agreement, whether completed or in process.

Notwithstanding the above, in the event of termination, the Consultant shall not be relieved of liability to the Agency for injury or damages sustained by the Agency by virtue of the Agreement, and the Agency may withhold any payments to the Consultant for the purposes of set-off until such time as the exact amount of damages due to the Agency is determined.

ARTICLE 11. OWNERSHIP OF DOCUMENTS: CONFIDENTIALITY

All materials produced by the Consultant under the auspices of the Agreement, including, without limitation, disks, plans, specifications, reports, manuals, pamphlets and articles, shall be the property of the Agency, and shall appropriately designate the Agency as the owner thereof.

Unless otherwise required under applicable law, the Consultant will hold in strict confidence all information received by the Consultant from the Agency and designated by the Agency as confidential ("Confidential Information") in connection with the Agreement or the

Services being performed hereunder, and will not disclose such Confidential Information to any person without the prior written consent of the Agency. Upon termination of the Agreement, the Consultant will return promptly, or cause to be returned promptly, to the Agency all tangible items, including copies thereof, of such Confidential Information which has been furnished to the Consultant by the Agency hereunder.

ARTICLE 12. SUCCESSORS AND ASSIGNS

The Consultant shall not assign, sublet, subcontract, sell, transfer or otherwise dispose of any interest in the Agreement without prior written approval of the Agency. Notwithstanding any such assignment, sublease, sale, transfer or other disposition permitted by the Agency, the Consultant will continue to remain fully and directly liable on all its obligations hereunder as though no such assignment, sublease, sale, transfer or other disposition had occurred. Upon making any such disposition, the Consultant shall furnish the Agency promptly with an executed copy of the disposing instrument, executed by assignee, sublessee, buyer or transferee, in which such party thereto assumes and agrees to observe and perform all of the Consultant's obligations hereunder. Any such disposition shall expressly be made subject to all defenses, set-offs, claims or counterclaims which would have been available to the Agency in the absence of such disposition.

The Agreement shall otherwise be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

ARTICLE 13. NON-WAIVER

No failure or waiver of successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant or article of the Agreement, shall operate as a discharge of any such condition, covenant or article, nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

ARTICLE 14. NOTIFICATION

All notices required or permitted under the Agreement shall be in writing and shall be deemed sufficiently served when delivered by hand if a receipt is obtained therefor, or when actually received if delivered by mail, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

To the Agency:	Massachusetts Development Finance Agency
Attention:	
With a copy to:	Massachusetts Development Finance Agency
	99 High Street, 11 th Floor
	Boston, MA 02110
Attention:	General Counsel

To the Consultant:
Attention:

Each party authorizes the other to rely in connection with their respective rights and obligations under the Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

ARTICLE 15. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of the Agreement, the Consultant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age (as defined by law), sex, sexual orientation, religion or physical or mental handicap. The Consultant agrees to comply with all applicable federal and state statutes prohibiting discrimination in employment including Title VII of the Civil Rights Acts of 1964, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, and Massachusetts General Laws Chapter 151B, section 4 (1).

In the event of the Consultant's noncompliance with the provisions of this Article, the Agency shall impose such sanctions as it deems appropriate, including, but not limited to: (i) withholding of payments due the Consultant under the Agreement until the Consultant complies; or (ii) termination or suspension of the Agreement.

ARTICLE 16. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

ARTICLE 17. FORCE MAJEURE

Neither party shall be liable to the other or be deemed to be in breach of the Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this Article, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Nothing contained in this Article 17 shall derogate from or affect the Agency's rights to terminate this Agreement pursuant to Article 10 above.

ARTICLE 18. SEVERABILITY

If any provision of the Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall remain enforceable to the fullest extent permitted by law.

ARTICLE 19. HEADINGS

The headings used herein are for reference and convenience only and shall not enter into the interpretation of the Agreement.

ARTICLE 20. AMENDMENTS

No amendment to the Agreement shall be effective unless it is signed by authorized representatives of both parties and accepted for filing at the offices of the Agency.

ARTICLE 21. CONFLICT OF INTEREST

The Consultant understands that any person providing services under the Agreement will be a "special state employee," for purposes of M.G.L. Chapter 268A, but shall otherwise be an independent contractor and not an employee of the Agency. The Consultant further agrees to comply with said Chapter 268A, as "special state employee," and to promptly disclose to the Agency any activity under the Agreement by the Consultant or an employee thereof that is or may result in a violation thereof.

The Agency acknowledges that the Consultant can perform services for other clients during the duration of this Agreement, provided such clients do not conflict with the services required under this Agreement and subject to applicable law.

ARTICLE 22. CERTIFICATIONS

By signing the Agreement, the Consultant certifies, under the pains and penalties of perjury, that it is in compliance with, and shall remain in compliance with, all legal requirements governing performance of this Agreement and the Consultant's authority to transact business in Massachusetts, and that the Consultant:

(1) is in compliance with all Massachusetts laws relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support as required by M.G.L. ch. 62C, § 49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts;

(2) is a "Qualified Employer" or an "Exempt Employer" as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 *et seq.*;

(3) is in compliance with all federal and state laws and regulations prohibiting discrimination, including without limitation Executive Order 11246;

(4) is not currently debarred or suspended from doing business with any governmental entity by the Commonwealth of Massachusetts or any of its entities or subdivisions under any Commonwealth law or regulation, including without limitation M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C, and that it is not currently debarred or suspended from doing business with any governmental entity by the Federal government under any federal law or

regulation;

(5) is in compliance with federal anti-lobbying requirements of 31 U.S.C. § 1352;

(6) is in compliance with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions pursuant to M.G.L. c. 151A, § 19A(b), or has notified MassDevelopment in writing that M.G.L. c. 151A does not apply to Consultant because Consultant does not have any individuals performing services for it within the Commonwealth of Massachusetts to the extent that Consultant would be required to make any such contributions or payments to the Commonwealth; and

(7) is not employing ten or more employees in an office or other facility located in Northern Ireland, and is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; or, if applicable, is employing ten or more employees in an office or other facility located in Northern Ireland and (i) does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; (ii) promotes religious tolerance within the work place, and the eradication of any manifestations or religious and other illegal discrimination; and (iii) is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; and

(8) (i) shall not knowingly use undocumented workers in connection with the performance of the Agreement or any contract with the Agency; (ii) shall verify, pursuant to federal requirements, the immigration status of all workers assigned to perform Services under this Agreement without engaging in unlawful discrimination; and (iii) shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s).

Any breach of the foregoing requirements shall constitute a material breach of this Agreement subjecting the Consultant to sanctions, including but not limited to monetary penalties, withholding of payments, and/or suspension or termination of this Agreement or any contract with the Agency.

ARTICLE 23. DIVERSE BUSINESS ENTERPRISE PREFERENCE

It is the policy of the Commonwealth and the Agency to promote equity of opportunity in state contracting; and, to that end, to encourage full participation of Diverse Business Enterprises (as defined below) in all areas of state contracting pursuant to Executive Orders 565, 523, and 526. For purposes of this section, “Diverse Business Enterprise(s)” shall mean a minority business enterprise, women business enterprise, veteran business enterprise, or service-disabled veteran-owned business enterprise, each as certified by or recognized as certified (as of the Effective Date) by the Commonwealth of Massachusetts Operational Services Division’s Supplier Diversity Office (SDO) pursuant to 425 CMR 2.00. It is the Agency’s intention to create a level playing field on which Diverse Business Enterprises can compete fairly for contracts.

In addition to all other equal opportunity employment requirements of this Agreement, the Agency strongly encourages the use of Diverse Business Enterprises as consultants, contractors, subconsultants, subcontractors, and suppliers. Lists of Diverse Business Enterprises certified or verified by the SDO are located at www.mass.gov/sdo.

The Consultant shall cooperate with the Agency and exercise good-faith efforts to seek opportunities for Diverse Business Enterprise participation. At the time this Agreement is executed, Consultant shall submit a certified Diverse Business Enterprise Participation Schedule, in the form attached hereto as Exhibit C, to the Agency. The Diverse Business Enterprise Participation Schedule is incorporated by reference into the Agreement.

ARTICLE 24. EXTENT OF AGREEMENT

The Agreement represents the entire and integrated agreement between the Agency and the Consultant and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations or representations, written or oral, with respect to the subject matter hereof.

ARTICLE 25. COMPLIANCE WITH APPLICABLE LAW

The Consultant shall comply with and be solely responsible for any violation of all federal, state and local laws, ordinances, rules, regulations or orders which are applicable to the Services being provided hereunder and in the performance of the Agreement.

ARTICLE 26. SIGNATORY AUTHORITY

Each party to this Agreement represents that the individual executing this Agreement on its behalf is duly authorized to bind such party to this Agreement according to its terms.

ARTICLE 27. COUNTERPARTS

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[Remainder of page left blank; signature(s) on next page]

IN WITNESS WHEREOF, the Agreement has been executed by the Agency and the Consultant and is effective as of the date first written above.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

By: _____
Name:
Title:

Agency Counsel

CONSULTANT

By: _____
Name:
Title:

Federal ID Number

Contract Number:
Contract Amount:

[Signature page of Agreement for Consulting Services between Massachusetts Development Finance Agency and CONSULTANT]

EXHIBIT A
SCOPE OF SERVICES

Consultant will provide _____ and related services as described in the Request for Qualifications & Proposals dated _____, and the Consultant's response dated _____, which are attached hereto and incorporated herein.

Services will be managed by individual Delivery Orders for specific tasks up to the maximum value of the contract. Each Delivery Order will specify the scope of work, staff effort and fee, and schedule to be included to complete the task, and will be billed on actual time basis per the rates approved in the attached fee proposal and any subsequent amendments. Each request for Delivery Order shall remain in the sole discretion of the Agency.

The Services shall be requested by the Agency on an as-needed basis from time to time during the term of this Agreement and such requests shall, at all times, remain in the sole discretion of the Agency. The Agency does not represent or otherwise guarantee that any minimum quantity or value of Services will be requested of the Consultant.

In the event there are any conflicts between the terms of this Agreement and the Consultant's Proposal, the terms of this Agreement shall govern.

EXHIBIT B
FEE SCHEDULE

EXHIBIT C

MassDevelopment's Diverse Business Enterprise (DBE) 1 Participation Schedule

PART 1: CONSULTANT INFORMATION

Business Name and Address: _____

Contact Name and Phone Number: _____

Email Address: _____

Consultant **is/is not** Supplier Diversity Office certified as a DBE:

☐ Yes ☐ No, not a certified DBE

If yes, check appropriate category(ies) below (**attach** any SDO Certification Letters):

☐ MBE ☐ WBE ☐ VBE ☐ SDVBE

PART 2: NARRATIVE (if applicable)

For contracts with values \$50,000.00 or more, consultant **must attach** to this schedule a narrative containing: (1) communications regarding DBE outreach, (2) identification of the work that may be completed by any DBEs, (3) a dispute resolution process with DBEs, and (4) procedures for the replacement of DBEs if termination is required.

PART 3: CONSULTANT'S DBE SUBCONTRACTORS/SUBCONSULTANTS

Have you sought out DBE Participation at the subcontract/subconsultant level: ☐ Yes ☐ No ☐ N/A

If yes, which methods did you use: ☐ Solicitation placed in trade publications ☐ Written notification

☐ Assist DBEs in obtaining required bonding or insurance ☐ COMMBUYS

☐ Other: _____

If yes, complete the below list:

<u>Name and Address of Planned Diverse Business Enterprise Subcontractors/ Subconsultants</u>	<u>Circle Appropriate Certification and <u>attach</u> Certification Letter from SDO</u>	<u>Dollar Amount of Participation on a Massachusetts fiscal year (July 1 – June 30) basis</u>
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	

PART 4: CERTIFICATION (REQUIRED)

Under the pains and penalties of perjury, I certify that the information provided on this form and all attachments is accurate.

Signature: _____

Written Name: _____

¹ For purposes of this schedule, DBE shall collectively refer to enterprises certified or verified by the Supplier Diversity Office (SDO) as Minority, Women, Service Disabled Veteran Owned Business Enterprises and Veteran Owned Business Enterprises (each respectively a MBE, WBE, SDVBE, and VBE). The SDO certifications are located at www.mass.gov/sdo