

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE AGENDA

MONDAY, NOVEMBER 14, 2011

7 PM  
Room 222

**ITEMS TO BE DISCUSSED:**

***Public hearing assigned for November 14, 2011***

#214-10(5) HIS HONOR THE MAYOR requesting the approval of the Economic Development Proposal for the Chestnut Hill Square Project and authorization of the final joint City of Newton and New England Development Corporation application for funding through the Infrastructure Investment Incentive Program (I-Cubed) of the Economic Development Proposal once the developer has received preliminary approval and settled all outstanding issues. [06/13/11 @ 6:05 PM]

**REFERRED TO PROG & SERV, PUBLIC FACIL. AND FINANCE COMMITTEES**

#367-10 HIS HONOR THE MAYOR requesting authorization to appropriate an amount not to exceed five million dollars (\$5,000,000) from bonded indebtedness for the following:

(B) installation of up to six modular classrooms at five elementary schools as well as the addition of permanent classrooms and renovations to the core of F.A. Day Middle School. [11/29/10 @ 3:23 PM]

*Note:* Seventy-five thousand dollars (\$75,000) of the \$5 million was approved on December 20, 2010 for site plan design work for modular classrooms at Horace Mann, Zervas, and Burr Elementary Schools and \$923,375 for installation of one modular classroom at Burr Elementary School, one modular classroom at Horace-Mann Elementary School, and two modular classrooms at Zervas Elementary School was approved on July 11, 2011.

**#367-10(B2A)** – Eighty-six thousand five hundred forty-five dollars (\$86,545) of the remaining \$4,001,625 for additional expenses related to the construction and installation of the four modular classrooms for the Horace Mann, Zervas, and Burr Elementary Schools.

**PUBLIC FACILITIES APPROVED 8-0 on 11/09/11**

**PROG & SERV APPROVED 3-0-1 (Sangiolo abstaining) on 11/09/11**

**#367-10(B2B)** One hundred two thousand one hundred seventeen dollars (\$102,117) of the remaining \$4,001,625 for the design of sprinkler systems for the Horace Mann, Zervas, and Burr Elementary Schools.

**PUBLIC FACILITIES APPROVED 7-0-1 (Lappin abstaining) on 11/09/11**

**PROG & SERV APPROVED 3-0-1 (Sangiolo abstaining) on 11/09/11**

**#367-10(B2)** – \$3,812,963 (remaining balance) for renovations to the core of F.A. Day Middle School and sprinkler systems

**HELD ON 11/09/11**

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, contact the Newton ADA Coordinator Trisha Guditz at 617-796-1156 or [tguditz@newtonma.gov](mailto:tguditz@newtonma.gov) or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

- #355-11 HIS HONOR THE MAYOR submitting the FY13 – FY17 Five-Year Financial Forecast for Board of Aldermen review/acceptance. [10-31-11 @ 3:12 PM]
- #356-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of fifteen thousand dollars (\$15,000) from FY11 Free Cash for the purchase of a vehicle for an Environmental Health Inspector in the Health and Human Service Department. [10-31-11 @ 2:49 PM]
- #357-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of six thousand three hundred ninety-nine dollars (\$6,399) from FY11 Free Cash for the purpose of purchasing a gear dryer for Fire Station #4 on Crafts Street. [10-31-11 @ 2:49 PM]
- #358-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of fifty thousand dollars (\$50,000) from FY11 Free Cash for the purpose of upgrading the City Hall uninterrupted power supply to protect the City's electronic data. [10-31-11 @ 2:49 PM]
- #359-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend thirty thousand dollars (\$30,000) from FY11 Free Cash for the purpose of upgrading network equipment in the City Hall computer room to gigabit speed. [10-31-11 @ 2:49 PM]
- #360-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of thirty five thousand dollars (\$35,000) from the Worker's Compensation Lump Sum Account for the purpose of settling a worker's compensation claim. [10-31-11 @ 2:48 PM]
- #361-11 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of one hundred seventy-five thousand dollars (\$175,000) from FY11 Free Cash to provide additional funding of the Other Post-Employment Benefits Liability Trust Fund. [10-31-11 @ 2:48 PM]
- #362-11 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of five hundred thousand dollars (\$500,000) from FY11 Free Cash to provide additional funding of the Rainy Day Stabilization Fund. [10/31/11 @ 2:48 PM]
- #385-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of seven thousand six hundred sixteen dollars (\$7,616) from the Worker's Compensation Lump Sum Account for the purpose of settling a worker's compensation claim. [11/04/11 @ 4:15 PM]

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #366-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of twenty-three thousand dollars (\$23,000) from FY11 Free Cash for the purpose of purchasing eleven Automatic Emergency Defibrillators for the Police Department. [10/31/11 @ 2:49 PM]  
**PS&T APPROVED 4-0 (Fuller, Johnson, Shapiro not voting) on 11/09/11**

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #367-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of thirty-nine thousand one hundred sixty dollars (\$39,160) from FY11 Free Cash for the purpose of purchasing and installing “on-spot” chains for fire apparatus. [10/31/11 @ 2:49 PM]  
**PS&T APPROVED 5-0 (Johnson, Shapiro not voting) on 11/09/11**

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #368-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of one hundred twenty thousand dollars (\$120,000) from FY11 Free Cash for the purpose of purchasing and installing mobile data terminals for incident communications with GPS for all 9 front-line fire apparatus, the spare vehicle and two chiefs’ vehicles. [10/31/11 @ 2:49 PM]  
**PS&T APPROVED 4-0-1 (Freedman abstaining, Johnson, Shapiro not voting) on 11/09/11**

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #369-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of six hundred thousand dollars (\$600,000) from bonded indebtedness for the purpose of purchasing a new fire engine. [10/31/11 @ 2:48 PM]  
**PS&T APPROVED 6-0 (Shapiro not voting) on 11/09/11**

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #370-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of seventy two thousand nine hundred eighty eight dollars (\$72,988) from FY11 Free Cash for the purpose of purchasing two Fire Department replacement vehicles: a Ford Expedition to be utilized by the Fire Alarm Division and a fire mechanical utility/maintenance truck. [11-03-11 12:08PM]  
**PS&T APPROVED 5-0 (Johnson, Shapiro not voting) on 11/09/11**

**ITEMS NOT SCHEDULED FOR DISCUSSION:**

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #383-11 HIS HONOR THE MAYOR submitting the FY13-FY17 Capital Improvement Program, totaling pursuant to section 5-3 of the Newton City Charter and the FY12 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/31/11 @ 3:12 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #382-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of three hundred thousand dollars (\$300,000) from bonded indebtedness for the purpose of funding improvements to City Hall. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #381-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of three hundred thousand dollars (\$300,000) from bonded indebtedness for the purpose of purchasing heavy vehicle Equipment for the Department of Public Works. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #380-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of four hundred eighty-five thousand dollars (\$485,000) from bonded indebtedness for the purpose of funding masonry repairs at various schools. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #379-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of four hundred fifty thousand dollars (\$450,000) from bonded indebtedness for the purpose of funding mechanical upgrades at various schools. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #378-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of three hundred fifteen thousand dollars (\$315,000) from bonded indebtedness for the purpose of funding the emergency generator upgrades at various schools. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #377-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of two hundred thousand dollars (\$200,000) from bonded indebtedness for the purpose of funding electrical upgrades in various schools. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #376-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of three hundred thousand dollars (\$300,000) from bonded indebtedness for the purpose of funding accessibility upgrades in various schools. [10/31/11 @ 2:48 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #375-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of forty thousand dollars (\$40,000) from FY11 Free Cash for the purpose of replacing the staircase at the Elliot Street Highway Operations Building. [10/31/11 @ 2:49 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #374-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of twenty-five thousand dollars (\$25,000) from FY11 Free Cash for the purpose of repairing/replacing a broken jail cell door and track at Police Headquarters. [10/31/11 @ 2:49 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #373-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of twenty-three thousand two hundred forty-six dollars (\$23,246) from FY11 Free Cash for the purpose of providing an exhaust system in the Police Garage area to meet code requirements. [10/31/11 @ 2:49 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #372-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of sixty thousand dollars (\$60,000) from FY11 Free Cash for the purpose of installing snow guards on the roofs at the Main Library and the Crafts Street Highway Stable. [10/31/11 @ 2:49 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #371-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of thirty-three thousand two hundred fifty dollars from FY12 Budget Reserve to the Public Buildings Department for the purpose of funding the costs of the boiler replacement at the Senior Center and for repair of the emergency generator at the Main Library. [11-01-11 @2:12 PM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #365-11 HIS HONOR THE MAYOR requesting authorization to transfer the sum of thirty-two thousand dollars (\$32,000) from the Health and Human Services Consultant Account to the Health and Human Services Part-time Work Account. [11-01-11 @2:12 PM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #364-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of one hundred fifty thousand dollars (\$150,000) from bonded indebtedness for the purpose of funding improvements to the Bobby Braceland Playground in Newton Upper Falls. [10/31/11 @ 2:48 PM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #363-11 HIS HONOR THE MAYOR requesting authorization to appropriate and expend the sum of one hundred thousand dollars (\$100,000) from bonded indebtedness for the purpose of funding the mechanical and electrical repairs to the Gath Pool. [10/31/11 @ 2:48 PM]

- #267-11 COMPTROLLER transmitting the Budgetary Basis Annual Financial Report for fiscal year ending June 30, 2011 for Board of Aldermen review/acceptance. [09/09/11 @ 2:05 PM]

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #262-11 HIS HONOR THE MAYOR requesting amendments to Chapter 17 of the City of Newton Ordinances, 2007 to increase fees for permits issued by the Fire Department. [08/29/11 @ 3:50 PM]
- #241-11 ALD. HESS-MAHAN, FREEDMAN & FULLER requesting a discussion concerning the adoption of the provisions of An Act Relative to Municipal Health Insurance , Ch. 69 of the Acts of 2011, which will allow cities and towns to avoid an estimated \$100 million in health insurance increases, while guaranteeing a role for municipal unions at every step of the process. [07-18-11 @9:08 AM]
- #140-11 ALD. HESS-MAHAN requesting acceptance of MGL Chapter 59 §5c which allows communities to shift the tax burden away from homeowners who live in lower than average valued single and multi-family homes to owners of higher valued homes, second homes, and most apartment buildings. {04-15-11 @ 3:07 PM]

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK, AND CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]  
**ZAP APPROVED 7-0 on 06/13/11**

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]  
**ZAP APPROVED 7-0 on 06/13/11**

**REFERRED TO PUBLIC FACILITIES & FINANCE COMMITTEES**

- #89-11 FINANCE COMMITTEE recommending that **Sec. 29-72(b) Same— Assessments upon owners of estates passed by new sewers.** of the City of Newton Rev Ordinances, 2007, be amended to increase the fixed uniform rates assessed upon owners of all estates passed by new sewers to rates that more accurately represent the estimated average cost of installing such sewers. [03-07-11 @9:30 AM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #60-11 HIS HONOR THE MAYOR requesting the budget for the Newton North High School construction project be amended by transferring funds from the owner's contingency line item to the construction manager at risk line item for the purpose of funding additional costs related to the demolition phase of the project. [02/10/11 @ 9:18 AM]

**REFERRED TO PROG. AND SERVICES AND FINANCE COMMITTEES**

- #373-10 ALD. GENTILE, HARNEY, SANGIOLO requesting amendment to §20-13, *Noise Control*, of the City of Newton Revised Ordinances to prohibit outdoor

athletic events from starting before 7 AM and increase the maximum fine to \$300.  
[12-10-10 @ 12:53 PM]

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #363-10 ALD. ALBRIGHT & DANBERG proposing a trial of parking meter free Saturdays between Thanksgiving and New Year for the shopping areas to support shopping at local businesses in Newton. [11/15/10 @ 6:30 PM]

**REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES**

- #311-10(A) HIS HONOR THE MAYOR requesting an appropriation in the amount of three million three hundred thirty-five thousand dollars (\$3,035,000) from bonded indebtedness for the purpose of funding the FY 2011 Capital Improvement Plan projects as follows:  
(A) Architectural Design and Engineering/Next Scheduled Fire Station \$400,000  
A-2 - HELD \$270,000 for final design bidding and construction admin  
[11/29/10 @ 3:23 PM]

**REFERRED TO PUBLIC SAFETY & TRANS. AND FINANCE COMMITTEES**

- #311-10(B) HIS HONOR THE MAYOR requesting an appropriation in the amount of three hundred thousand dollars (\$300,000) from bonded indebtedness for the purpose of funding the Manet Road Emergency Communications Radio Tower Replacement, which is included in the FY 2011 Capital Improvement Plan. [11/29/10 @ 3:23 PM]  
**PUBLIC SAFETY & TRANSPORTATION APPROVED 7-0 on 12/08/10**

**REFERRED TO LAND USE & FINANCE COMMITTEES**

- #276-10 ALD. FULLER, CROSSLEY, DANBERG, LINSKY requesting a review of guidelines for mitigation fund provisions to maximize the use of such funds on behalf of the city together with mechanisms by which the city can better track such funds to ensure they are used in a timely fashion.

**REFERRED TO FINANCE AND PROGRAMS AND SERVICES COMMITTEES**

- #245-06 ALD. JOHNSON AND HESS-MAHAN requesting an amendment to the City Charter to require the Mayor annually to prepare and submit to the Board of Aldermen a long-term financial forecast of anticipated revenue, expenditures and the general financial condition of the City, including, but not limited to identification of any factors which will affect the financial condition of the City; projected revenue and expenditure trends; potential sources of new or expanded revenues; anticipated municipal needs likely to require major expenditures; and a strategic plan for meeting anticipated municipal needs, to include, but not be limited to, any long or short-term actions that may be taken to enhance the financial condition of the City.

Respectfully submitted,

Leonard J. Gentile, Chairman

# MEMORANDUM

**TO:** Alderman Leonard Gentile, Chairman, Newton Finance Committee

**CC:** Board of Aldermen

**FROM:** John E. Twohig

**DATE:** September 30, 2011

**SUBJECT:** I-Cubed

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Enclosed for review by the Finance Committee of the Newton Board of Aldermen are the following documents in connection with the Preliminary Economic Development Proposal (the "Proposal") for the Chestnut Hill Square Project (the "Project"):

1. Preliminary Approval Letter issued by the Secretary of the Executive Office for Administration and Finance;
2. Summary of the provisions of the Infrastructure Development Assistant Agreement ("IDAA") to be entered into by the City, the Commonwealth and the Developer; and
3. Draft IDAA.

We are pleased to provide you with the enclosed Approval Letter, which declares that the application for funding to support the Project's proposed public infrastructure improvements (the "Public Infrastructure Project"), has been preliminarily approved for \$10 million and certifies the total value of the Public Infrastructure Project costs to be approximately \$14.6 million as detailed in the Independent Consultant Analysis and confirmed by the Massachusetts Development Finance Agency.

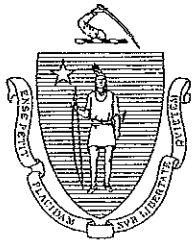
The Approval Letter establishes that at least \$10 million of Project Costs are eligible for final approval. However, it is important to note that the Department of Revenue also confirmed that the displacement values and other supporting economic data can justify a final approval of up to \$12 million. Accordingly, we anticipate that the final approved Economic Development Proposal will include \$10 - \$12 million of Project Costs. We are hopeful that the remaining Public Infrastructure Project costs will be paid for, in part, by \$2 million of funding requested in a Mass Works application submitted to the Commonwealth earlier this month.

We also look forward to working with the City to prepare the documentation required by the Approval letter and the IDAA in order to receive approval of the final Economic Development Proposal. As you will note, the documentation includes, but is not limited to, a jointly filed Economic Development Proposal, required certificates and reports, sufficient documentation of financial commitments to pay costs not funded by the Bonds, and certification of the establishment of a Municipal Liquidity Reserve. A draft IDAA has been provided to the City Solicitor's office and a copy is enclosed herewith for the Committee's review, together with a summary of the key provisions.

We look forward to reviewing these documents with the Finance Committee on October 11, 2011 and responding to any questions. Thank you.







THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE FOR  
ADMINISTRATION AND FINANCE  
STATE HOUSE • ROOM 378  
BOSTON, MA 02133

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JAY GONZALEZ  
SECRETARY

TEL: (617) 727-2040  
FAX: (617) 727-2779  
www.mass.gov/eoaf

September 12, 2011

Douglass E. Karp  
Manager  
NED Chestnut Hill LLC  
One Wells Avenue  
Newton, Massachusetts 02459

Dear Douglass E. Karp:

The purpose of this letter is to inform you that the Preliminary Economic Development Proposal (the "Proposal") for Chestnut Hill Square Project (the "Project") submitted by NED Chestnut Hill LLC. (the "Developer") for funding to support public infrastructure improvements (the "Public Infrastructure Project") under Sections 5 to 12A of Chapter 293 of the Acts of 2006, as amended by Chapter 129 of the Acts of 2008 ("the Act"), is hereby preliminarily approved for \$10 million.

The process and requirements for approval of an Economic Development Proposal are set forth in regulations adopted under the Act. This letter addresses the four requirements for preliminary approval set for the in 801 CMR 51.08. Unless otherwise defined, terms in this letter shall have the meanings assigned to them in the Act and in 801 CMR 51.02.

**1. Requirements of 801 CMR 51.08(1)**

Preliminary Approval requires that the Secretary of Administration and Finance (the "Secretary") determine that the Proposal is eligible for approval and that it is reasonably likely that the Proposal will satisfy the criteria identified in 801 CMR 51.03. Based solely and in reliance upon the Preliminary Economic Development Proposal, the Independent Consultant Analysis, the Preliminary Certificate of the Commissioner, and the Preliminary Certificate of the Agency, I find that the Proposal is eligible for approval, subject to the conditions identified below, and that it is reasonably likely that the contemplated Proposal will satisfy the criteria for approval identified in 801 CMR 51.03.



Pursuant to 801 CMR 51.03(4), the Proposal may not be approved if the Developer applies for any other state infrastructure assistance funded by the Commonwealth, unless the Secretary approves of any such application. I hereby waive the restriction on other funding outlined in 801 CMR 51.03(4) to the extent that it applies to the MassWorks Infrastructure Program.

## **2. Requirements of 801 CMR 51.08(2)**

The Preliminary Approval Letter must also state the conditions that must be satisfied and confirmed prior to final approval of the Economic Development Proposal by the Secretary.

Prior to issuing final approval of the Secretary confirming that the Secretary has approved the funding for each phase of the Economic Development Proposal, pursuant to 801 CMR 51.13(2)(f), the following conditions must be satisfied separately for both the Initial Bonds and any Additional Bonds:

- (A) The Developer and the Municipality shall have jointly filed an application to the Secretary and the Agency for approval of the Economic Development Proposal and the application shall satisfy the requirements of 801 CMR 51.11 and 51.12;
- (B) The Secretary shall have received copies of or, where applicable, shall have issued, each of the certificates and reports required under 801 CMR 51.13;
- (C) The Developer shall provide sufficient documentation that the Developer has funding or financial commitments satisfactory to the Secretary sufficient to fund the Costs of the Economic Development Project, exclusive of any Costs of the Public Infrastructure Improvements to be financed by Bonds to be issued by the Agency. These commitments shall 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;
- (D) The Developer shall provide sufficient documentation of the Developer's plan (1) 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 (2) to secure its own obligation to complete the portion of the Public Infrastructure Improvements not funded by Bonds under the Act, or to provide other security satisfactory to the Secretary. The Secretary's approval of the Economic Development Proposal will be made conditional upon such security having been obtained prior to the issuance of the related Bonds;

- (E) The Developer shall provide certification that the Municipality has established a Municipal Liquidity Reserve for the benefit of the Commonwealth for each Assessment Parcel within the Economic Development Project 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; and
- (F) The Developer shall provide documentation that it has established Commitments, as defined in 801 CMR 51.02, sufficient to generate the New State Tax Revenue required to meet Debt Service associated with the eligible Project Costs identified in Section 1. above;
- (G) The Developer shall provide confirmation that no litigation or administrative proceeding is pending or, to the knowledge of the Developer, threatened which is likely to (1) prevent, delay or interfere in any material respect with the development of the Economic Development Project and the construction and completion of the Public Infrastructure Improvements as contemplated by the Economic Development Proposal, or (2) materially adversely affect the power and authority of the Developer to perform its obligations with respect to the Economic Development Project and the Public Infrastructure Improvements or (3) materially adversely affect the financial position of the Developer;
- (H) Developer shall provide confirmation that all environmental and other permitting required to carry out the Public Infrastructure Project has been obtained; and
- (I) The Developer shall provide confirmation that the Project has not received or will not receive additional forms of public assistance as identified in 801 CMR 51.03(4), other than those identified and expressly permitted in this letter, or a written request for waiver if the Developer intends to receive such public assistance

### **3. Requirements of 801 CMR 51.08(3)**

This Preliminary Approval Letter incorporates by reference the related Independent Consultant Analysis; the Preliminary Certificate of the Commissioner, attached as Exhibit A, 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, attached as Exhibit B, 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.

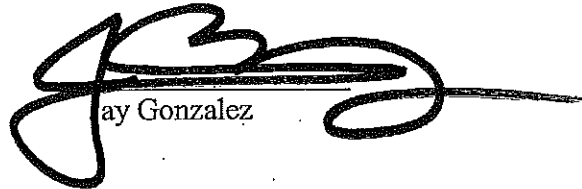
**4. Requirements of 801 CMR 51.08(4)**

Pursuant to 801 CMR 51.08(4), I hereby declare that \$10 million in Project Costs be eligible for final approval, based on the analysis contained in the Preliminary Certificate of the Agency.

This Preliminary Approval Letter of the Secretary is being provided to and may be relied upon by the Developer and the Municipality solely for the purpose of determining whether the Preliminary Economic Development Proposal meets the conditions for preliminary approval by the Secretary. This Preliminary Approval Letter of the Secretary may not be relied upon by any other party without the express prior written consent of the Secretary.

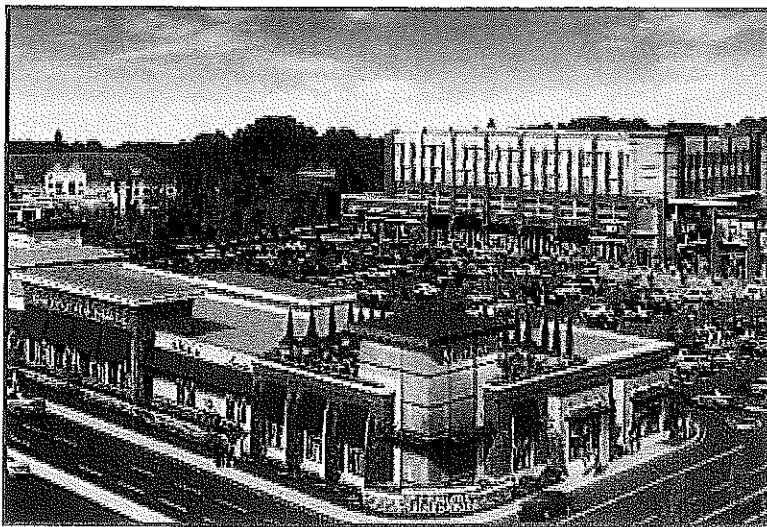
This Preliminary Approval of the Secretary may be updated one or more times prior to the approval of the Economic Development Proposal in accordance with the provisions of the Acts of 2006 and of 801 CMR 51.00 *et seq.*

Signed on this   12th   day of   September  , 2011.

  
Jay Gonzalez

INDEPENDENT CONSULTANT ANALYSIS  
{See Attached}

# I-Cubed: Chestnut Hill Square Project



**Prepared For:**

Commonwealth of Massachusetts  
Executive Office for Administration & Finance

**Prepared By:**

BBP & Associates, LLC

September 9, 2011

## Executive Summary

New England Development (NED) submitted an application for I-Cubed bond financing to the Commonwealth of Massachusetts for bond issuance related to public infrastructure supporting development of Chestnut Hill Square, a mixed-use development located on an approximately 11-acre site on Route 9 in Newton, Massachusetts.

The Commonwealth of Massachusetts asked BBP & Associates, LLC (BBP LLC), with assistance from Hill International (Hill), to review and confirm the work done by NED and its team of consultants to demonstrate feasibility and economic / fiscal benefits as required by the I-Cubed regulations, in the following key areas:

- Development Feasibility
- Cost of Infrastructure
- Economic / Fiscal Impact
- Tax Revenues / Net New Impacts

### 1. Development Feasibility

To confirm the development feasibility of the Chestnut Hill Square project, various analyses were performed including review of:

- Local demographic, economic, and real estate market conditions
- NED's experience, which revealed the developer's significant relevant experience, financial strength, local market understanding, and ability to execute the project
- Market overview of the retail, restaurant and medical office markets to confirm sufficient demand exists for the project contemplated
- General assumptions pertaining to the financial feasibility of the project include building / construction costs, operating revenue / expenses, soft costs, and financing assumptions

Based on a review of the submitted documentation provided by NED and the above referenced analyses, the Chestnut Hill Square development project is based on reasonable and market supportable cost and revenue assumptions and is determined to be market and financially feasible.

**Summary Analysis of Development Feasibility.** Based on the market factors and pro forma conducted for this analysis, the development feasibility of the Chestnut Hill Square development appears to be feasible.

- Revenue: Based on market rents while taking into consideration expense reimbursements and vacancy, revenues will range from \$12.1 million in Year 1 to nearly \$14.2 million in Year 10.
- Expense: Based on market operating expenses, property taxes, and insurance operating expenses will range from \$3.3 million to \$4.5 million in the first 10 years of operations.



## Chestnut Hill Square

- **Debt Service:** Annual loan payment of \$6.8 M (Based on loan amount of \$87.9 M, interest rate of 6%, and a 25 year loan period with monthly installments)
- **IRR:** Based on the series of net cash flow, the Chestnut Hill Square yields an internal rate of return of 15.14% - Assumes a sale of \$61.2 M in Year 10 (Based on a 8% Capitalization Rate of Year 11 NOI \$10,427,770 and takes into consideration sale expenses of 1.5%)

The table below shows a snapshot of the first five year operating pro-forma for the Chestnut Hill Square project.

Chestnut Hill Square - Pro Forma Snapshot: First Five Years					
	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Revenue</b>					
Minimum Rent	\$9,675,000	\$9,720,600	\$9,767,112	\$10,069,554	\$10,117,945
Expense Reimbursements	\$2,929,500	\$3,032,033	\$3,138,154	\$3,247,989	\$3,361,669
Vacancy	(\$464,850)	(\$470,785)	(\$476,283)	(\$494,998)	(\$501,137)
<b>Total Revenue</b>	<b>\$12,139,650</b>	<b>\$12,281,848</b>	<b>\$12,428,983</b>	<b>\$12,822,545</b>	<b>\$12,978,477</b>
<b>Expenses</b>					
Operating Expenses	\$1,822,800	\$1,886,598	\$1,952,629	\$2,020,971	\$2,091,705
Property Taxes & Insurance	\$1,519,000	\$1,572,165	\$1,627,191	\$1,684,142	\$1,743,087
<b>Total Expenses</b>	<b>\$3,341,800</b>	<b>\$3,458,763</b>	<b>\$3,579,820</b>	<b>\$3,705,113</b>	<b>\$3,834,792</b>
<b>Net Operating Income</b>	<b>\$8,797,850</b>	<b>\$8,823,085</b>	<b>\$8,849,163</b>	<b>\$9,117,432</b>	<b>\$9,143,685</b>
Debt Service	(\$6,801,851)	(\$6,801,851)	(\$6,801,851)	(\$6,801,851)	(\$6,801,851)
<b>Net Cash Flow</b>	<b>\$1,995,999</b>	<b>\$2,021,234</b>	<b>\$2,047,312</b>	<b>\$2,315,581</b>	<b>\$2,341,834</b>
<b>Internal Rate of Return</b>	<b>15.14%</b>				

**Findings.** The development as proposed by the developer is based on market supportable revenues and expenses and is viable as presented.

### 2. Cost of Infrastructure

In order to confirm the cost of infrastructure improvements related to the project, Hill International (Hill) reviewed the infrastructure cost estimates provided, as well as conducted a quantity confirmation check for the infrastructure costs associated with the Chestnut Hill Square project that were developed for the Chestnut Hill Square proposal.

Unit costs provided by the developer and their transportation engineering consultant, Vanasse & Associates, Inc. (VSI) were compared to typical costs used to estimate infrastructure projects in Newton, Massachusetts and the region. Knowledge was gained from NED and VSI with regard to anticipated

scope and methods approved by the Massachusetts Department of Transportation which further reinforced unit costs that were developed by Hill.

Despite minor variations between NED (\$14,665,000) and Hill (\$14,676,000) infrastructure cost estimates for the Chestnut Hill Square development project, the resulting amounts were very similar and appear to be reasonable.

### 3. Economic / Fiscal Impact

The development of the Chestnut Hill Square project will accomplish several public and private goals. The project will repurpose and reuse a site that has been underutilized for over 10 years, it will cause important needed infrastructure improvements to the Route 9 corridor then and the project will bring important revenues to the Commonwealth in retail sales and income taxes generated. These important economic and fiscal outcomes are summarized below.

**Economic and Fiscal Impacts and Projected Commonwealth Revenues.** This section of the report presents the economic impact analysis including an economic impact analysis of commercial operations and project construction. Economic analyses include estimates of the direct and indirect impacts of employment and earnings, as well as household spending in the local economy. The last section summarizes the economic impacts of Chestnut Hill Square at build-out and stabilization.

#### Employment Estimates

- **Net New FTE Jobs** – The Chestnut Hill Square (CHS) project is estimated to employ a net new **472** FTE employees and create an additional **99** indirect jobs in the local economy
- **Earnings** – Total payroll for the CHS FTE employees is estimate to be **\$17.7 million** on an annual basis with another **\$4.9 million** from the indirect employment. Total earnings for the employment of Chestnut Hill Square project, including indirect earnings, are over **\$22.6 million**.

#### Economic Impacts from Construction

- **Temporary Construction Jobs** – Construction of the Chestnut Hill Square (CHS) project is estimated to employ a net new **490** employees and create an additional **168** temporary indirect jobs in the local economy
- **Earnings** – Based on average earnings per hour of \$22.16, the total annual earnings from construction will equal approximately **\$22.6 million**.
- **Materials Purchases** – Local sales of building materials of nearly **\$16 million** will result in non-recurring sales tax generation of **\$1,004,284**.

## 4. Displacement: "Net New" Sales Tax

Retail sales in the Chestnut Hill Square development will not all be new to the market and thus will capture sales from the existing retail market. This is due to the fact that consumers have a limited amount of money to spend on goods and services and will not necessarily increase their expenditures just because new businesses locate nearby. Some sales will be "displaced" from existing area businesses. The following table lists the displacement factors by retail type.

Displacement Matrix							
Use	Retail Gap Discount <sup>1</sup>	New to Market <sup>2</sup>	Net New Market Impact <sup>3</sup>	New to Location <sup>2</sup>	Net New Location Impact	Relocation <sup>4</sup>	Displacement Factor
<b>Displacement Impact</b>	<b>25%</b>		<b>50%</b>		<b>50%</b>	<b>100%</b>	
Apparel	25%	7%	4%	71%	36%	22%	86%
Housewares	25%	0%	0%	0%	0%	100%	100%
Restaurant	25%	100%	50%	0%	0%	0%	75%
Jewelry	100%	100%	50%	0%	0%	0%	100%
Gift Stores	25%	0%	0%	100%	50%	0%	75%
Wine Shop	25%	0%	0%	100%	50%	0%	75%
Electronics	25%	100%	50%	0%	0%	0%	75%
Grocery	25%	0%	0%	100%	50%	0%	75%
Health Club	n/a	0%	0%	100%	50%	0%	50%
Medical Office	n/a	0%	0%	25%	13%	75%	88%

- **Retail Operations: "Net New" Sales** – Net new retail and restaurant sales Chestnut Hill Square are calculated to equal approximately **\$24,306,173**.
- **Retail Operations: "Net New" Sales Tax** – Annually recurring sales tax revenues from the restaurant component at Chestnut Hill Square are calculated to equal approximately **\$1,519,136**.
- **Construction Period** – Total income tax revenues to the state during the construction period are estimated at **\$1,137,405**.
- **Ongoing Operations** – Income tax from the direct employment at Chestnut Hill Square will total **\$915,923** annually.

## Chestnut Hill Square

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**Ten Year Summary.** The economic and fiscal impacts presented above are compared to “typical displacement ranges” provided by the ANF/DNR client group. For the purpose of comparison, a high and low displacement range was used; retail – 85% to 90%; medical office – 60% to 75% were used. As shown in the table below, using the BBP displacement methodology, which is consistent with industry practice, total ten-year direct revenues to the Commonwealth for both the construction period and ongoing Chestnut Hill Square operations are **\$28,343,832**. On the low end using the most conservative displacement factors total ten-year direct revenues are **\$11,840,135**.

<b>Summary of Ten-Year Impacts</b>				
	<b>Retail</b>	<b>Sales Tax</b>	<b>Income Tax</b>	<b>Total Revenues</b>
BBP Approach	\$17,638,397	\$10,705,435		<b>\$28,343,832</b>
85% Retail / 60% Medical Office	\$12,639,216	\$4,204,731		<b>\$16,843,946</b>
90% Retail / 75% Medical Office	\$8,760,905	\$3,079,230		<b>\$11,840,135</b>

## Section 1. Market and Development Feasibility

### Overview

New England Development (NED), a prominent New England commercial property developer, proposes to redevelop an economically underutilized blighted site located on an approximately 11-acre site on Route 9 in Newton, Massachusetts.

The first phase of the Chestnut Hill Square project is proposed to total approximately 217,000 gross square feet of new development. The project will include the following uses: various retail components (68,600 SF), restaurant (16,400 SF), grocery (47,000 SF), health club (28,000 SF) and medical office (57,000 SF). The second phase of the project, not included in this analysis, will include additional retail and residential uses. Due to the existing deteriorating condition of Route 9 and infrastructure improvements required by MassDOT, NED envisions that significant upfront infrastructure costs are required in order to accommodate existing and anticipated traffic volumes associated with the project and subsequent corridor redevelopment. To offset the substantial initial infrastructure investment and move forward with the project, NED seeks I-Cubed funding in the amount of \$15,000,000.

### Development Feasibility

The first step in the analysis of the NED Chestnut Hill Square (CHS) development proposal is to evaluate the market and financial feasibility of the development. That is, is there sufficient market demand to support the new development and if built, will the project operations prove to be financially viable. The methodology laid out below identifies the specific tasks that were undertaken in the evaluation of the CHS proposal.

The following analyses associated with the Chestnut Hill Square development project were conducted and includes:

- Market Analysis: Development trends and growth patterns were evaluated and include development costs, revenue generation, employment population, households, income levels and revenues. In addition, market conditions, including square footage of development, leasing rate, vacancy rate, absorption rate, and other factors, will be assessed by reviewing current, pipeline, and historical market data for residential, office, and retail markets.

## Chestnut Hill Square

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- Financial Feasibility Analysis: The development pro-forma submitted by New England Development (the developer) for the Chestnut Hill Square project was reviewed to assess the financial feasibility of the project, as presented.
  
- Infrastructure Analysis: Public infrastructure improvement cost estimates and assumptions related to the Chestnut Hill Square development, which are to be funded through the I-Cubed program, were reviewed and validated. In addition, assessment of the current engineering / design plans occurred to highlight all errors, omissions, or conflicts in the documents as it relates to constructability or any other issues that may compromise building performance.
  
- Fiscal & Economic Impact Analysis: An impact analysis measuring the economic and subsequent fiscal impacts of the Chestnut Hill Square development project during the construction period and during annual operations at full build-out were calculated.
  
- Displacement Analysis: Revenues displaced in existing area businesses as a result of project components of the Chestnut Hill Square development were estimated.
  
- Net New Income/Employment: While any new project into an existing market will generate sales, not all of those sales are “new” to the region and the state. Also referred to as “displacement” the net new impact of the development will be measured.

### Development Sponsor

The sponsor of the development project is New England Development (NED), one of the premier real estate development companies in the Northeast and is located in Newton, Massachusetts.

NED is nationally recognized for its ability to design innovative and vibrant mixed-use projects throughout the region, which successfully combine retail and residential components. Founded by Stephen R. Karp in 1982, NED has a proven track record of success in developing and operating large-scale projects from Maine to Florida. The firm’s success is based on a thorough understanding of the local conditions and cooperation with local communities.

With over thirty (30) year history of development in the Commonwealth of Massachusetts, NED has created some of the largest commercial projects in the state, including Cambridgeside Galleria (a mixed-use hotel, retail, residential project), Solomon Pond Mall (a 1,000,000 square foot regional mall), The Pinehills (a 3,000 unit residential and commercial project), and multiple other projects.

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NED's projects include urban mixed-use facilities, waterfront developments, shopping centers, and suburban residential communities located throughout Massachusetts and New England, including Boston, Cambridge, Worcester, North Attleboro, Peabody, Plymouth, Brockton, Nantucket and Marlborough. Recent mixed-use projects of NED include Cambridge Side Galleria; the Pinehill's retail, residential and conference center in Plymouth; Wisconsin Place retail office and residential complex in Friendship Heights, Maryland; and Pier 4 Waterfront Development that includes office space, hotel, residential and retail at Boston Harbor.

### **Development Description & Deal Structure**

The Chestnut Hill Square development project will include approximately 217,000 square feet of commercial space, which consists of approximately 85,000 square feet of retail and restaurant space, an approximately 47,000 square foot grocery store, 57,000 square feet of medical office space, and a 28,000 square foot health club. In addition, the second phase of the development will also include up to 100 residential units with an accompanying 12,000 square feet of retail and approximately 908 parking spaces.

When completed, Chestnut Hill Square will transform an existing economically underutilized site consisting of dilapidated parking lots and aging commercial buildings into a new, mixed-use community that will include unique new-to-market tenants and bring significant benefits to the Commonwealth and the City of Newton. When completed, the project will be the largest project in the City of Newton in over a decade. Further, the project is consistent with the City's goals to foster sustainable design by reusing previously developed sites located along existing transportation infrastructure, contributing to the continuing vibrancy of the Route 9 corridor in Chestnut Hill.

### **Review of Phasing Approach**

Due to multiple market factors, including residential market demand, the Chestnut Hill Square development will likely be constructed in two phases:

- Phase I: Consisting of three buildings totaling 217,000 square feet, Phase I will include approximately 85,000 square feet of retail and restaurant space, 47,000 square feet grocery store, 57,000 square feet of medical office space, a 28,000 square foot health club, and approximately 691 parking spaces.
- Phase II: Contemplated to begin construction at a later date, Phase II will be comprised of a single, stand-alone building containing up to 100 residential units and an additional

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approximately 12,000 square feet of retail and a parking structure. Upon completion, fifteen percent (15%) of the residential units in the project will be designated as affordable housing units, or an appropriate alternative mechanism will be elected, consistent with the City of Newton Inclusionary Zoning Ordinance.

### **General Comment on Project Assumptions**

As is presented below, the overall market trends, project size, rent and construction assumptions used by NED in their proposal are consistent with current industry trends. NED has already begun to line up tenants and negotiate lease arrangements. Where these arrangements are in final form, BBP has used the associate rent, revenue and cost assumptions.

### **Cost Review: Project Development**

Required as part of the I-Cubed Regulations, NED provided information regarding the total development costs of the Chestnut Hill Square development project. The development costs detailed below account for Phase I of the development, accounting for 217,000 square feet, and exclude Phase II costs for developing up to 100 residential units, parking, and an additional 12,000 square feet of retail.

Phase I of the project is estimated to result in base hard building costs of approximately \$32.4 million, not including tenant improvement allowances. All building costs were compared to construction cost data provided by RSMeans, a leading supplier of construction cost information, to determine accuracy. The following building costs by use are detailed below.

- Supermarket: Consists of 47,000 square feet with a construction cost of \$99.02 per square foot, amounting to \$4.6 million. Per square foot construction cost estimates for this component is within range as costs typically range between \$92 and \$105.
- Retail / Restaurant: Consists of 85,000 square feet with a construction cost of \$153.82 per square foot, amounting to \$13.1 million. Per square foot cost estimates for this component is within range, as a cost of retail typically ranges between \$90 and \$103 and a construction cost of restaurant typically ranges between \$173 and \$198.
- Medical Office: Consists of 57,000 square feet with a construction cost of \$170.65 per square foot, amounting to \$9.7 million. Per square foot cost estimates for this component is lower than the typical range as construction costs typically range between \$198 and \$276.



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- Health Club: Consists of 28,000 square feet with a construction cost of \$165.52 per square foot, amounting to \$4.6 million. Per square foot cost estimates for this component is within range as construction costs typically range between \$161 and \$224.
- Construction Supervision: A construction supervision / general contracting fee of \$1.59 per square foot applies to the 217,000 square foot development and amounts to \$345,000

Chestnut Hill Square – Estimated Building Costs					
Use	SF	Construction Cost	Construction Cost / SF	Construction Cost / SF Range	Finding
Supermarket	47,000	\$4,653,940	\$99.02	\$92 - \$105	Within Typical Range
Retail / Restaurant	85,000	\$13,074,700	\$153.82	\$103 - \$198	Within Typical Range
Medical Office	57,000	\$9,727,050	\$170.65	\$198 - \$276	Lower Than Typical Range
Health Club	28,000	\$4,634,560	\$165.52	\$161 - \$224	Within Typical Range
Construction Supervision	217,000	\$345,030	\$1.59		Industry Standard

Source: RS Means

### Revenues

The Chestnut Hill Square development is estimated to generate approximately \$12.1 million from gross rent and expense reimbursements while taking into consideration vacancies. The following sources of revenues are detailed below.

- Grocery Store: Consisting of 47,000 square feet with a rental rate of \$28.72, the grocery store component of the development generates a gross rent of approximately \$1.3 million annually. The lease rate of \$28.72 for this component accurately reflects existing market rates, as a lease agreement has recently been executed for this use.
- Retail / Restaurant: Consisting of 85,000 square feet with a rental rate of \$60.00, the retail / restaurant component of the development generates a gross rent of approximately \$5.1 million annually. The lease rate of \$60.00 was reviewed and confirmed supportable by various local real estate professionals and was also compared to local real estate market data for accuracy.
- Health Club: Consisting of 28,000 square feet with a rental rate of \$33.75, the health club component of the development generates a gross rent of approximately \$945,000 annually. The lease rate of \$33.75 for this component accurately reflects existing market rates, as a lease agreement has recently been executed for this use.
- Medical Office: Consisting of 57,000 square feet with a rental rate of \$40.00, the medical office component of the development generates a gross rent of approximately \$2.2 million annually. The lease rate of \$40.00 was reviewed and confirmed supportable by various local real estate professionals and was also compared to local real estate market data for accuracy.

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- **Expense Reimbursement:** An expense reimbursement rate of \$13.50 per square foot is consistent with industry standards based on a CAM charge of \$8.40/SF and real estate costs of approximately \$4-\$5/SF.
- **Pro Forma Vacancy:** An overall vacancy of 5 percent was assumed to account for vacancies in the retail/restaurant and medical office components of the development. Note the vacancy loss also includes the expense reimbursements on that vacant space.

Chestnut Hill Square - Operating Revenue				
Revenues	SF	Rent / SF	Gross Rent	Findings
Grocery Store	47,000	\$28.72	\$1,350,000	Supportable - Signed Lease
Retail / Restaurant	85,000	\$60.00	\$5,100,000	Supportable - Within Typical Range
Health Club	28,000	\$33.75	\$945,000	Supportable - Signed Lease
Medical Office	57,000	\$40.00	\$2,280,000	Supportable - Within Typical Range
Expense Reimbursements			\$2,929,500	Within Typical Range
Pro Forma Vacancy			(\$465,000)	Industry Standard
<b>Total</b>	<b>217,000</b>		<b>\$12,139,340</b>	

### Summary Analysis of Development Feasibility

Based on the market factors and pro forma snapshot summarized below, the development feasibility of the Chestnut Hill Square development appears to be feasible.

- **Revenue:** Based on market rents while taking into consideration expense reimbursements and vacancy, revenues will range from \$12.1 million in Year 1 to nearly \$14.2 million in Year 10.
- **Expense:** Based on market operating expenses, property taxes, and insurance operating expenses will range from \$3.3 million to \$4.5 million in the first 10 years of operations.
- **Debt Service:** Annual loan payment of \$6.8 M (Based on loan amount of \$87.9 M, interest rate of 6%, and a 25 year loan period with monthly installments)
- **IRR:** Based on the series of net cash flow, the Chestnut Hill Square yields an internal rate of return of 15.14% - Assumes a sale of \$61.2 M in Year 10 (Based on a 8% Capitalization Rate of Year 11 NOI \$10,427,770 and takes into consideration sale expenses of 1.5%)

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<b>Chestnut Hill Square - Pro Forma Snapshot</b>					
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>Revenue</b>					
Minimum Rent	\$9,675,000	\$9,720,600	\$9,767,112	\$10,069,554	\$10,117,945
Expense Reimbursements	\$2,929,500	\$3,032,033	\$3,138,154	\$3,247,989	\$3,361,669
Vacancy	(\$464,850)	(\$470,785)	(\$476,283)	(\$494,998)	(\$501,137)
<b>Total Revenue</b>	<b>\$12,139,650</b>	<b>\$12,281,848</b>	<b>\$12,428,983</b>	<b>\$12,822,545</b>	<b>\$12,978,477</b>
<b>Expenses</b>					
Operating Expenses	\$1,822,800	\$1,886,598	\$1,952,629	\$2,020,971	\$2,091,705
Property Taxes & Insurance	\$1,519,000	\$1,572,165	\$1,627,191	\$1,684,142	\$1,743,087
<b>Total Expenses</b>	<b>\$3,341,800</b>	<b>\$3,458,763</b>	<b>\$3,579,820</b>	<b>\$3,705,113</b>	<b>\$3,834,792</b>
<b>Net Operating Income</b>	<b>\$8,797,850</b>	<b>\$8,823,085</b>	<b>\$8,849,163</b>	<b>\$9,117,432</b>	<b>\$9,143,685</b>
<b>Debt Service</b>	<b>(\$6,801,851)</b>	<b>(\$6,801,851)</b>	<b>(\$6,801,851)</b>	<b>(\$6,801,851)</b>	<b>(\$6,801,851)</b>
<b>Net Cash Flow</b>	<b>\$1,995,999</b>	<b>\$2,021,234</b>	<b>\$2,047,312</b>	<b>\$2,315,581</b>	<b>\$2,341,834</b>
<b>Internal Rate of Return</b>	<b>15.14%</b>				

### Findings

The development as proposed by the developer is based on market supportable revenues and expenses and is viable as presented.

### Section 2. Public Infrastructure Analysis

#### Hill International Summary of Findings:

Hill International reviewed the cost estimates provided, as well as conducted a quantity confirmation check for the infrastructure costs associated with the Stimulus-I-Cubed Funding of the Chestnut Hill Square Project in Newton, Massachusetts.

Hill International received the following information:

- A. Chestnut Hill Infrastructure Estimate prepared by Vanasse & Associates, Inc.
- B. NEWTON-BROOKLINE Boylston Street (Route 9) Infrastructure Drawings (14 Sheets).
- C. CB/A Landscape Architects Drawings for Infrastructure Landscape Improvements. (1 Sheet)
- D. Vanasse & Associates, Chestnut Hill Square, Florence Street/Heath Street Improvement Plans (3 Sheets).
- E. RJO'Connell, Chestnut Hill Square Conduit Plan at Route 9. (1 Sheet)

## Chestnut Hill Square

ESTIMATE - SUMMARY FOR I-CUBED FUNDING					
ITEM #	ITEM DESCRIPTION	QUANT	UoM	TOTAL COST (rounded)	TOTAL COST HILL INT.
<b>Section 61 Mitigation</b>					
1	Route 9 Corridor (West of Langley to HPP) and Site Drives	1	LS	\$5,250,000	\$5,260,000
2	Hammond Pond Parkway @ Route 9	1	LS	\$3,900,000	\$3,810,000
3	Route 9 @ Parker Street	1	LS	\$760,000	\$880,000
4	Hammond Pond Parkway @ Heath Street	1	LS	\$480,000	\$490,000
5	Horace James Circle Improvements	1	LS	\$380,000	\$400,000
6	Traffic Signal at Route 9 @ Langley Road	1	LS	\$340,000	\$320,000
7	Route 9 @ Hammond Street	1	LS	\$9,000	\$9,000
8	Route 9 @ Tully Street	1	LS	\$9,000	\$9,000
9	Hammond Street @ Heath Street	1	LS	\$8,000	\$8,000
10	Langley Road @ Jackson	1	LS	\$7,000	\$6,000
11	Route 9 @ Elliot/Woodward	1	LS	\$290,000	\$290,000
<b>Newton</b>					
N1	Centre Street @ Cypress Street (N1)	1	LS	\$340,000	\$298,000
N2	Beacon Street @ Centre Street (N2)	1	LS	\$8,000	\$8,000
N3	Beacon Street @ Langley Road and Sumner Street (N3)	1	LS	\$53,000	\$53,000
N4	Beacon Street @ Hammond Street (N4)	1	LS	\$8,000	\$8,000
N5	Centre Street @ Walnut Street (N5)	1	LS	\$9,000	\$9,000
<b>General Areas</b>					
1	Florence Street Sidewalk	1	LS	\$460,000	\$469,000
2	Opticom Equipment Improvements	1	LS	\$196,000	\$196,000
3	Relocate Above Ground Utilities	1	LS	\$2,158,000	\$2,153,000
<b>TOTAL</b>				<b>\$14,665,000</b>	<b>\$14,676,000</b>

Hill International compared the unit costs provided in the Vanasse estimate to typical costs used to estimate infrastructure projects in the Newton, Massachusetts area. Generally, the Vanasse costs are in line with the Hill International values. Knowledge was gained from Vanasse with regard to anticipated scope and methods approved by the Massachusetts Department of Transportation. With this knowledge, we further adjusted our quantities and rates to localize the estimate. The method of estimating varied between Vanasse and Hill International but the resulting amounts were very similar.

The estimated costs for the infrastructure improvements as described appear to be reasonable.

**Section 3. Economic and Fiscal Impacts and Projected Commonwealth Revenues**

This section of the report presents the economic impact analysis including an economic impact analysis of commercial operations and project construction. Economic analyses include estimates of the direct and indirect impacts of employment and earnings, as well as household spending in the local economy. The last section summarizes the economic impacts of Chestnut Hill Square at build-out and stabilization.

**A. Economic Impacts of Commercial Operations**

**Employment Estimates**

Development of new commercial uses within Chestnut Hill Square project will create and support permanent jobs, and generate significant wages and salaries that will, in turn, be re-spent throughout the local economy. The direct jobs and wages created and supported through this development are a key factor in assessing economic benefits of new commercial uses.

There will be a wide variety of direct full-time equivalent employment (FTE) generated through the operation and management of new commercial enterprises. To estimate jobs created, the analysis utilizes a combination of data provided by the Bureau of Labor Statistics, the Statistical Abstract of the United States, the Urban Land Institute, and various industry resources. Reasonable assumptions have also been made regarding workers per square foot, and staffing and wage levels. Table 1 shows estimated staffing levels for the proposed tenant mix. As is described later in this report, the Net New employment after displacement as well as vacancy factors will lower these figures.

<b>Table X. Total Employment at Full Build-out</b>		
<b>Use</b>	<b>Building SF</b>	<b>Number of FTE Jobs (2/)</b>
Restaurant	16,400	141
Retail	68,600	197
Medical Office	57,000	228
Health Club	28,000	65
Grocery Store	47,000	90
<b>Total</b>	<b>217,000</b>	<b>721</b>

**Net New FTE Jobs** – The Chestnut Hill Square (CHS) project is estimated to employ over 720 employees as noted above. However, a number of these jobs are direct relocations from within the Commonwealth of Massachusetts as current employees of operations that will be relocating to this

## Chestnut Hill Square

project. The table below presents the net new employment upon which the balance of the economic and fiscal impact analysis will be based.

<b>Table Y. Displacement Impact on Net New Jobs</b>			
<b>Use</b>	<b>FTE Jobs</b>	<b>Percent New</b>	<b>Net New Jobs</b>
Restaurant	141	100.0%	<b>141</b>
Retail	197	60.3%	<b>119</b>
Health Club	65	100.0%	<b>65</b>
Grocery Store	90	100.0%	<b>90</b>
Medical Office	228	25.0%	<b>57</b>
<b>Total</b>	<b>721</b>		<b>472</b>

### Earnings

Total direct wages and salaries (earnings) are calculated based on total Net New jobs calculated for this project and use 2011 Massachusetts Department of Labor Statistics data for the Boston MSA. The 472 FTE jobs supported by the development are projected to earn approximately \$17.7 million annually in 2011 dollars, at build-out and stabilization.

<b>Estimated Annual Earnings Impacts &amp; Expenditures - Permanent Employment</b>			
<b>Use</b>	<b>FTE's Total Employees</b>	<b>Average Earnings/Yr.</b>	<b>Total Annual Earnings</b>
Restaurant	141	\$27,629	\$3,895,619
Retail	119	\$25,578	\$3,036,817
Health Club	65	\$36,922	\$2,399,898
Grocery Store	90	\$22,502	\$2,025,180
Medical Office	57	\$111,181	\$6,337,289
<b>Total</b>	<b>472</b>		<b>\$17,694,801</b>

### Direct and indirect Impacts

The U.S. Department of Commerce's *Regional Input-Output Modeling System* (RIMS II) estimates how much a one-time or sustained increase in economic activity in a particular region will be supplied by industries located in the region. The RIMS II model is utilized within this analysis to estimate direct and indirect economic impacts from commercial operations and construction activity. The RIMS II model employs regional input-output (I-O) multipliers which account for interindustry relationships within regions.

# Chestnut Hill Square

<b>Total Employment Impacts</b>				
	<b>Total FTE Jobs</b>	<b>Employment Multiplier</b>	<b>Indirect Employment Impact</b>	<b>Total Employment Impact</b>
Restaurant	141	1.0948	13	154
Retail	119	1.1504	18	137
Health Club	65	1.3527	23	88
Grocery Store	90	1.1504	14	104
Medical Office	57	1.5467	31	88
<b>Total</b>	<b>472</b>		<b>99</b>	<b>571</b>

Based on the RIMS II model, employment at CHS will support an additional 99 indirect FTE jobs, and wages earned by employees in new operations will generate indirect earnings of approximately \$4.9 million in the local economy.

<b>Total Earnings Impacts</b>				
	<b>Total Annual Earnings</b>	<b>Earnings Multiplier</b>	<b>Indirect Earnings Impact</b>	<b>Total Earnings Impact</b>
Restaurant	\$3,895,619	1.1996	\$777,565	\$4,673,184
Retail	\$3,036,817	1.2214	\$672,351	\$3,709,168
Health Club	\$2,399,898	1.3471	\$833,004	\$3,232,902
Grocery Store	\$2,025,180	1.2214	\$448,375	\$2,473,555
Medical Office	\$6,337,289	1.3471	\$2,199,673	\$8,536,961
<b>Total</b>	<b>\$17,694,801</b>		<b>\$4,930,969</b>	<b>\$22,625,770</b>

Total earnings for the employment of Chestnut Hill Square project, including indirect earnings, are over \$22.6 million.



**B. Economic Impacts from Construction**

Economic impacts from the construction of a project such as Chestnut Hill Square can be significant. Based on total construction costs at build-out of approximately \$75 million, including on- and off-site infrastructure, we estimate that approximately 490 FTE construction jobs would be sustained during the course of project development. Based on average earnings per hour of \$22.16, BBP LLC projects that total annual earnings from construction will equal approximately \$22.6 million.

<b>Direct Impacts</b>	
Hard Construction Costs	\$75,262,500
Labor Cost	30%
<b>Total Annual Earnings</b>	<b>\$22,578,750</b>
Average Earnings/Hr	\$22.16
<b>Total FTE Jobs</b>	<b>490</b>
<b>Indirect Impacts</b>	
Output (\$)	\$75,262,500
Output Multiplier	1.2557
Indirect Economic Impact	\$19,244,621
<b>Total Economic Impact</b>	<b>\$94,507,121</b>
Total FTE Jobs	490
Employment Multiplier	1.3433
Indirect Employment Impact	168
<b>Total Employment Impact</b>	<b>658</b>
Total Annual Earnings	\$22,578,750
Earnings Multiplier	1.2918
Indirect Earnings Impact	\$6,588,479
<b>Total Earnings Impact</b>	<b>\$29,167,229</b>

Various supplier and support industries will benefit from expenditures and employment associated with construction of Chestnut Hill Square. Of course, not all of this expenditure will occur in the local or even regional economy. Nonetheless, the value of this impact remains quite significant and of importance to local suppliers.

**C. Sales Taxes**

**Displacement: "Net New" Sales Tax**

Retail sales in the Chestnut Hill Square development will not all be new to the market and thus will capture sales from the existing retail market. This is due to the fact that consumers have a limited amount of money to spend on goods and services and will not necessarily increase their expenditures just because new retailers locate nearby. The calculations in the table below reflect a multifaceted analysis that considered the current unmet retail demand by category, the amount of space that was thought to be new to the market, new to the location or relocation from within the greater Chestnut Hill Square market. This methodology is similar to that employed by the developer and reasonable based on typical industry approaches. In two cases in the table below the displacement factor is 100%, in house wares and jewelry. The house ware category is programmed to be 100% relocation and the jewelry store sector does not show any retail demand in the immediate CHS area up to a 30-minute drive time.

<b>Displacement Matrix</b>							
<b>Use</b>	<b>Retail Gap Discount<sup>1</sup></b>	<b>New to Market<sup>2</sup></b>	<b>Net New Market Impact<sup>3</sup></b>	<b>New to Location<sup>2</sup></b>	<b>Net New Location Impact</b>	<b>Relocation<sup>4</sup></b>	<b>Displacement Factor</b>
<b>Displacement Impact</b>	<b>25%</b>		<b>50%</b>		<b>50%</b>	<b>100%</b>	
Apparel	25%	7%	4%	71%	36%	22%	86%
Housewares	25%	0%	0%	0%	0%	100%	100%
Restaurant	25%	100%	50%	0%	0%	0%	75%
Jewelry	100%	100%	50%	0%	0%	0%	100%
Gift Stores	25%	0%	0%	100%	50%	0%	75%
Wine Shop	25%	0%	0%	100%	50%	0%	75%
Electronics	25%	100%	50%	0%	0%	0%	75%
Grocery	25%	0%	0%	100%	50%	0%	75%
Health Club	n/a	0%	0%	100%	50%	0%	50%
Medical Office	n/a	0%	0%	25%	13%	75%	88%

**Retail Operations: "Net New" Sales Tax**

Sales data related to the retail / restaurant component of the Chestnut Hill Square development was evaluated. Utilizing sales data from Urban Land Institute Dollars & Cents of Shopping Centers, input from the client specific to tenants under lease and other third party sources, supportable sales per square foot values were calculated for the retail categories programmed at CHS. Sales taxes from retail operations and construction will generate revenues to the state. Annually recurring sales tax revenues

## Chestnut Hill Square

from the restaurant and retail component at Chestnut Hill Square are calculated to equal approximately \$491,758.

<b>Displacement Calculations: Net New Sales</b>							
<b>Use</b>	<b>Chestnut Hill Program (SF)</b>	<b>Estimated Sales/SF</b>	<b>Estimated Sales/Rev</b>	<b>Displacement Factor</b>	<b>Net New Sales</b>	<b>Percent Taxable</b>	<b>Net New Sales Tax Revenues</b>
Apparel	48,500	\$670	\$32,495,000	86%	\$4,492,350	75%	<b>\$210,579</b>
Housewares	5,500	\$490	\$2,695,000	100%	\$0	100%	<b>\$0</b>
Restaurant	16,400	\$840	\$13,776,000	75%	\$3,444,000	0%	<b>\$0</b>
Jewelry	1,000	\$1,950	\$1,950,000	100%	\$0	100%	<b>\$0</b>
Gift Stores	3,500	\$500	\$1,750,000	75%	\$437,500	100%	<b>\$27,344</b>
Wine Shop	2,600	\$820	\$2,132,000	75%	\$533,000	5%	<b>\$1,666</b>
Electronics	7,500	\$1,600	\$12,000,000	75%	\$3,000,000	100%	<b>\$187,500</b>
Grocery	47,000	\$1,040	\$48,880,000	75%	\$12,220,000	7%	<b>\$53,463</b>
Health Club	28,000	n/a	\$358,645	50%	\$179,323	100%	<b>\$11,208</b>
<b>Total</b>			<b>\$116,036,645</b>		<b>\$24,306,173</b>		<b>\$491,758</b>

### Construction Impacts: Materials Purchase

Non-recurring sales taxes will be generated during the project construction phase, through the sale and purchase of building materials. BBP LLC estimates total sales taxes from construction to equal approximately \$983,150. See Table 10.

<b>Retail Sales Tax On Construction Materials</b>	
Total Construction Materials Cost	\$52,683,750
Percent Regional Purchases	30.5%
Total Regional Purchases	\$16,068,544
Sales Tax Rate	6.25%
<b>Non-recurring Sales Tax</b>	<b>\$1,004,284</b>

## D. Income Taxes

## Chestnut Hill Square

Income taxes from new employment represent additional fiscal revenue to the state. BBP LLC estimates annual recurring income taxes generated from CHS project to equal approximately \$915,900.

<u>Economic Impacts</u>	EARNINGS			
	Direct	Indirect	Total	Income Tax
Restaurant	\$3,895,619	\$777,565	\$4,673,184	\$189,177
Retail	\$3,036,817	\$672,351	\$3,709,168	\$150,152
Health Club	\$2,399,898	\$833,004	\$3,232,902	\$130,872
Grocery Store	\$2,025,180	\$448,375	\$2,473,555	\$100,133
Medical Office	\$6,337,289	\$2,199,673	\$8,536,961	\$345,588
<b>TOTALS</b>	<b>\$17,694,801</b>	<b>\$4,930,969</b>	<b>\$22,625,770</b>	<b>\$915,923</b>

Additional non-recurring income taxes will accrue during the construction phase from construction jobs, as well as design and engineering work, legal services, marketing, promotion, etc. Income taxes generated from construction are estimated to equal approximately \$1.2 million.

<u>Income Tax - Construction Period</u>	
Construction Jobs	490
Total Taxable Income	\$22,589,980
State Income Tax Rate	5.30%
<b>Income Tax</b>	<b>\$1,137,405</b>

### E. Summary of Economic Impacts

The economic and fiscal impacts presented above are summarized in this section and compared to “typical displacement ranges” provided by the ANF/DNR client group. For the purpose of comparison, a high and low displacement range was used; retail – 85% to 90%; medical office – 60% to 75%. For these ten-year projections, a conservative inflation rate of 2% is assumed. There is also an assumption that employment will increase by 5% in Year 5 and another 5% in Year 10.

As shown in the table below, using the BBP displacement methodology, which is consistent with industry practice, total ten-year direct revenues to the Commonwealth for both the construction period and ongoing Chestnut Hill Square operations are **\$28,343,832** and using the most conservative displacement factors total ten-year direct revenues are **\$11,840,135**.

## Chestnut Hill Square

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<b>Summary of Ten-Year Impacts</b>			
<b>Displacement</b>	<b>Retail Sales Tax</b>	<b>Income Tax</b>	<b>Total Revenues</b>
BBP Approach	\$17,638,397	\$10,705,435	<b>\$28,343,832</b>
85% Retail / 60% Medical Office	\$12,639,216	\$4,204,731	<b>\$16,843,946</b>
90% Retail / 75% Medical Office	\$8,760,905	\$3,079,230	<b>\$11,840,135</b>

Clearly in the first two scenarios presented in the table above the total net new revenues to the Commonwealth exceed the amount of the I-Cubed infrastructure request of \$15 million. Only in the third and most conservative model does the project revenues fall short. It is important to note that the breadth of infrastructure improvements required by MassDOT of the development project are not fully needed by the project itself. Additional signalization, improved egress from the Chestnut Hill Mall and other improvements are needed for their own merit and not required by the size of the Chestnut Hill Square project.

EXHIBIT A

PRELIMINARY CERTIFICATE OF COMMISSIONER  
{See Attached}



NAVJEET K. BAL  
COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
*PO Box 9550*  
*Boston, MA 02111-9550*

**PRELIMINARY CERTIFICATE OF THE  
MASSACHUSETTS DEPARTMENT OF REVENUE**

This Certificate is issued by the Massachusetts Department of Revenue (the "Department"), with respect to the Preliminary Economic Development Proposal submitted by NED Chestnut Hill, LLC (the "Developer") and the Independent Consultant Analysis, submitted by BBP & Associates, LLC, as amended to the date of this Certificate, to the Secretary of Administration and Finance (the "Secretary") of the Commonwealth (the "Commonwealth"), pursuant to St. 2006, c. 293, §§ 5 through 12A, as amended (the "Act"), the regulation promulgated thereunder (801 CMR 51.00 – 51.17, the "Regulation"), and the Department's Technical Information Release 08-18 and its Technical Information Release 09-10. Terms and phrases in this certificate are used as defined in the Act and the Regulation.

**Whereas**, the Act states that the Secretary shall not certify an economic development proposal until the Department, to the extent practicable, certifies that the amount of projected annual new state tax revenues allocable to all commercial components of the economic development project following completion and occupancy thereof will be at least equal to the projected maximum annual debt service due on the bonds, as determined by the Secretary, to be issued to fund the public infrastructure improvements related to the project; provided that the Commissioner will certify as to the projected annual new state tax revenues as set forth above, and the Massachusetts Development Finance Agency will provide the certification as to the project costs that can be supported by the Estimated New Tax Revenue; and

**Whereas**, the Regulation further specifies, at 801 CMR 51.07(5), that 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 certificate 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 may include 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; and

**Whereas**, in accordance with 801 CMR 51.03(2)(d), project approval requires that 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, but for the sole purpose of satisfying all or any portion of this coverage requirement in excess of 1 times coverage, the Secretary and the Commissioner shall count as new state tax revenues all or any portion of projected new state tax revenues to be realized in the related fiscal year or in previous fiscal years as a result of construction-related activity in connection with the economic development project and, in doing so, (i) shall allocate any such projected new state tax revenue from construction-related activity 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, and (ii) shall allocate such projected new state tax revenue from construction-related activity over the fiscal year in which such activity occurred or any subsequent year or years proposed by the Developer;

**Now, therefore**, the Department hereby provides estimates, based on the Preliminary Economic Development Proposal, Independent Consultant report, and the Department's own analysis, and for each fiscal year of the Commonwealth through the expected final payment of the bonds as shown in Attachment 1:

1. The projected gross new state income tax revenues to be generated by the economic development project will be \$58,217,741; the projected gross new state sales tax revenues to be generated by the economic development project will be \$128,339,556; the combined total projected gross new state tax revenues to be generated by the economic development project will be \$186,557,297 for the Bond Issue Phase.
2. The portion of state tax revenues that is projected to constitute net new income, and sales tax revenues, net of displaced and dedicated revenues, will be \$42,506,743 for the Bond Issue Phase.
3. The portion of such projected new revenues that constitutes net new dedicated revenue will be \$11,456,823 for the Bond Issue Phase.
4. The portion of such projected new revenues that constitutes displaced revenue will be \$132,593,731 for the Bond Issue Phase.



5. The projected gross income tax revenues to be generated from construction activity related to the economic development project will be \$1,189,851; the projected gross sales tax revenues to be generated from construction activity related to the economic development project will be \$1,221,999; the combined total projected gross state tax revenues to be generated from construction activity related to the economic development project will be \$2,411,851.

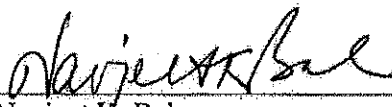
6. The portion of such projected new revenues that constitutes dedicated revenue to be generated from construction activity related to the economic development project will be \$490,755.

7. The projected net new state tax revenues to be generated from construction activity related to the economic development project will be \$1,921,096.

This Preliminary Certificate of the Department is being provided to and may be relied upon by the Secretary solely for the purpose of determining whether the Preliminary Economic Development Proposal is eligible for approval by the Secretary. This Preliminary Certificate of the Department may be relied upon by the Massachusetts Development Finance Agency (the "Agency") for the purpose of making its certifications in the Agency's Preliminary Certificate pursuant to 801 CMR 51.07(6). This Preliminary Certificate of the Department may not be relied upon by any other party without the express prior written consent of the Department.

Signed on this 12<sup>th</sup> day of September 2011.

MASSACHUSETTS DEPARTMENT OF REVENUE

By:   
Name: Navjeet K. Bal  
Title: Commissioner of Revenue

**Attachment 1**

Tax Revenue In \$ 000	Total Net New Tax Revenue for Bond Issue										
	Construction Phase					Operational Phase					
	Income Tax	Sales Tax	Displaced Tax	Dedicated Tax	Net Construction Taxes	Gross Income Tax	Gross Sales Tax	Gross All Taxes	Displaced All Taxes	Dedicated All Taxes	Net Operational Taxes
Year											
2010											
2011	318	340	0	137	522						
2012	689	701	0	281	108						
2013	183	181	0	73	281						
2014						1,164	2,930	4,084	2,934	262	898
2015						1,205	3,012	4,217	3,021	269	927
2016						1,249	3,097	4,345	3,111	276	957
2017						1,293	3,182	4,475	3,203	284	988
2018						1,338	3,268	4,606	3,295	292	1,019
2019						1,384	3,354	4,738	3,388	299	1,051
2020						1,431	3,443	4,873	3,483	307	1,083
2021						1,479	3,533	5,011	3,580	315	1,116
2022						1,527	3,624	5,151	3,678	324	1,149
2023						1,577	3,716	5,293	3,778	332	1,183
2024						1,627	3,809	5,436	3,879	340	1,218
2025						1,680	3,902	5,582	3,980	348	1,253
2026						1,733	3,996	5,729	4,084	357	1,289
2027						1,786	4,092	5,878	4,188	365	1,326
2028						1,843	4,188	6,031	4,295	374	1,362
2029*						1,902	4,286	6,186	4,404	383	1,401
2030						1,964	4,384	6,348	4,516	391	1,441
2031						2,029	4,485	6,514	4,631	400	1,483
2032						2,096	4,588	6,682	4,747	409	1,528
2033						2,165	4,687	6,852	4,864	418	1,569
2034						2,234	4,790	7,024	4,983	428	1,613
2035						2,303	4,894	7,197	5,103	437	1,657
2036						2,373	5,000	7,372	5,224	446	1,702
2037						2,446	5,105	7,552	5,348	456	1,748
2038						2,524	5,213	7,736	5,475	465	1,796
2039						2,604	5,323	7,927	5,606	475	1,846
2040						2,688	5,437	8,125	5,742	485	1,897
2041						2,771	5,551	8,322	5,878	496	1,949
2042						2,858	5,667	8,525	6,017	506	2,002
2043						2,948	5,786	8,734	6,160	516	2,058
<b>Total \$ 000</b>	<b>1,190</b>	<b>1,222</b>	<b>0</b>	<b>491</b>		<b>58,218</b>	<b>128,340</b>	<b>186,557</b>	<b>132,594</b>	<b>11,457</b>	<b>32,507</b>

EXHIBIT B

PRELIMINARY CERTIFICATE OF AGENCY  
{See Attached}

**PRELIMINARY CERTIFICATE OF THE  
MASSACHUSETTS DEVELOPMENT FINANCE AGENCY**

**WHEREAS**, on March 25, 2011 New England Development, LLC (the "Developer") submitted a Preliminary Economic Development Proposal, as amended to the date of this certificate, to the Secretary of Administration and Finance (the "Secretary") of the Commonwealth of Massachusetts (the "Commonwealth") pursuant to St. 2006, c. 293 §§ 5 through 12A, as amended (the "Acts of 2006"), and the regulations promulgated thereunder, for the development of certain "public infrastructure improvements", as defined in the Acts of 2006, located in Newton, Massachusetts (the "Public Infrastructure Project"), which Public Infrastructure Project is associated with the development by the Developer of Chestnut Hill Square, a mixed use development located on an approximately 11 acre site on Route 9 in Newton, Massachusetts (collectively, the "Economic Development Project") (terms used but not defined herein shall have the meanings given to them in 801 CMR 51.00 *et seq.* as in effect on the date hereof); and

**WHEREAS**, as provided in 801 CMR 51.07(3) the Secretary engaged BBP & Associates, LLC ("Consultant") as the Independent Consultant to provide the Independent Consultant Analysis for the Public Infrastructure Project; and

**WHEREAS**, the Consultant has provided an Independent Consultant Analysis dated September 9, 2011; and

**WHEREAS**, pursuant to 801 CMR 51.07(5) the Commissioner of the Department of Revenue of the Commonwealth, established pursuant to section 2 of chapter 14 of the Massachusetts General Laws (the "Commissioner"), has provided a Preliminary Certificate of the Commissioner, attached hereto as Exhibit A, which includes the estimated New State Tax Revenues and expected state tax revenues from construction-related activity that will result from the Preliminary Economic Development Proposal; and

**WHEREAS**, pursuant to 801 CMR 51.07(6) and 801 CMR 51.08(1), before an Economic Development Project can receive Preliminary Approval of the Secretary, the Massachusetts Development Finance Agency (the "Agency") must provide a Preliminary Certificate of the Agency as to the estimated Project Costs for the Public Infrastructure Project and the portion of such Project Costs that can be supported by the estimated New State Tax Revenues as identified in Exhibit A; and

**WHEREAS**, pursuant to 801 CMR 51.07(6), the 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; and

**WHEREAS**, as set forth in 801 CMR 51.06(2)(l), the Agency is to assume the following: (i) the total principal amount shall be equal to the portion of the Cost of the Public Infrastructure Improvement requested to be funded under the Acts of 2006, plus estimated costs of issuance of the Bonds equal to 3% of said amount; (ii) 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; (iii) issuance date or dates not more than three (3) years prior to the expected completion of the related Public Infrastructure Improvements or portions thereof being financed with proceeds of the Bonds; (iv) maximum term of Bonds of thirty (30) years from date of issuance; and (v) 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.

**NOW THEREFORE**, the Agency hereby certifies:

1. Based solely and in reliance upon the Independent Consultant Analysis and the Economic Development Proposal, the estimated total Project Costs for the Public Infrastructure Project are \$14,676,000.
2. Based solely and in reliance upon the Independent Consultant Analysis and the Economic Development Proposal the estimated Project Costs are \$32,435,280. This Preliminary Certificate will be amended to reflect any changes in the updated Independent Consultant Analysis.
3. Based solely and in reliance upon the Preliminary Economic Development Proposal, the Independent Consultant Analysis, the Preliminary Certificate of the Commissioner and the assumptions set forth in 801 CMR 51.06(2)(l) and 801 CMR 51.07(6), the Agency has determined, pursuant to the calculations and assumptions set forth in Schedule 1 attached hereto, New State Tax Revenues, as estimated by the Commissioner under 801 CMR 51.06, can support \$10,000,000 of total Project Costs for the Public Infrastructure Project.
4. The Agency makes no certification as to the ability to finance the Public Infrastructure Project Costs on a tax-exempt basis.
5. Prior to issuing its final certification of the Agency confirming that the Agency has approved the Economic Development Proposal approval pursuant to the Acts of 2006 and 801 CMR 51.13(f), (i) the Developer and the Municipality shall have jointly filed an application to Secretary and the Agency for approval of the Economic Development Proposal, such application satisfying the requirements of 801 CMR 51.12; and (ii) the Agency shall have received copies of or, where applicable, shall have issued, each of the certificates and reports required under the Acts of 2006 and

801 CMR 51.13, except for said final certification of the Agency, including, but not limited to, 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;
- (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;
- (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;
- (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 the Costs of the Economic Development Project, except any of such Costs expected to be funded by the Agency from the proceeds of the Bonds under the Acts of 2006;
- (E) Certification of the Commissioner confirming that the amount of projected annual New State Tax Revenues allocable to each of the Occupied Project Components of the Economic Development Project 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 *et seq.* and identified in the certification of the Executive Director of the Agency referenced in the updated version of the Preliminary Certificate of the Agency;
- (F) Certification of the Secretary that the Developer has funding or financial commitments satisfactory to the Secretary sufficient to fund the Costs of the Economic Development Project 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;

- (G) Certification of the Secretary that 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 will be made conditional upon such security having been obtained prior to the issuance of the related Bonds; and
- (H) Certification of the Secretary that the Municipality has established a Municipal Liquidity Reserve for the benefit of the Commonwealth for each Assessment Parcel within the Economic Development Project 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.

Prior to issuing any of the certifications and approval of the Agency required under 801 CMR 51.13 and the Acts of 2006, the Agency may request and rely upon such evidence, investigations, reports, analyses and certificates as the Agency reasonably deems necessary.

This Preliminary Certificate of the Agency is being provided to and may be relied upon by the Secretary solely for the purpose of determining whether the Preliminary Economic Development Proposal is eligible for approval by the Secretary and that it is reasonably likely that the contemplated Economic Development Proposal will satisfy the Criteria for Approval of an Economic Development Proposal by the Secretary identified in 801 CMR 51.03. This Preliminary Certificate of the Agency may not be relied upon by any other party without the express prior written consent of the Agency.

This Preliminary Certificate of the Agency may be updated one or more times prior to the approval of the Economic Development Proposal by the Secretary in accordance with the provisions of the Acts of 2006 and of 801 CMR 51.00 *et seq.*

Signed on this 12<sup>th</sup> day of September, 2011.

MASSACHUSETTS DEVELOPMENT  
FINANCE AGENCY

By: Laura L. Canter  
Name: Laura L. Canter  
Title: Executive Vice President



**CHESTNUT HILL SQUARE  
 MASS DEVELOPMENT VERIFICATION OF BOND PRINCIPAL AMOUNT (as of 9/12/11)**

Assumed Bond Dated Date	1/1/2012
Bond Amortization Date	Annually January 1, 2014
Bond Interest Payment Date	Semi-annually beginning July 1, 2012

Interest Rate	5.00%
Interest Only Period (Months)	24
Amortization (years)	28
Requested Bond Amount	10,000 (in \$000)

Fiscal Year Ending June 30	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
	Principal	Interest	Debt Service	Balance Outstanding	Net Operating Tax Revenues Available to Pay Debt Service and Meet Coverage Test (DOR)	Net Construction Tax Revenues (DOR)	Construction Tax Revenues Used to meet Current Year's 1.5x Coverage Test ((1.5*CI-E)	Construction Tax Revenues Available to Meet Future Years' 1.5x Coverage Test (HP-RII-F-G)	New State Tax Revenue Plus Construction Tax Revenues Used to Meet 1.5x Coverage Test (E+G)	Projected Debt Service Coverage (Including Construction Tax Revenues Needed to Achieve 1.5x Coverage) (JC)	Projected Debt Service Coverage by New State Tax Revenues Only (EC)	New State Tax Revenues After Debt Service (E-C)
2011				10,000		522		522	0	N/A	N/A	N/A
2012		500	500	10,000	888	1,108	1,630	1,921	898	1.8	1.8	398
2013		500	500	10,000	927	291	1,921	1,921	1,007	1.5	1.4	256
2014	171	500	671	9,829	957	80	1,841	1,841	1,007	1.5	1.4	286
2015	180	491	671	9,649	988	49	1,792	1,792	1,007	1.5	1.5	317
2016	189	482	671	9,460	1,019	19	1,773	1,773	1,019	1.5	1.5	348
2017	198	473	671	9,262	1,051				1,051	1.6	1.5	380
2018	208	463	671	9,054	1,083				1,083	1.6	1.5	412
2019	219	453	671	8,835	1,116				1,116	1.7	1.7	445
2020	229	442	671	8,606	1,149				1,149	1.7	1.7	478
2021	241	430	671	8,365	1,183				1,183	1.8	1.8	512
2022	253	418	671	8,112	1,218				1,218	1.8	1.8	546
2023	266	406	671	7,846	1,253				1,253	1.9	1.9	582
2024	279	392	671	7,567	1,289				1,289	1.9	1.9	617
2025	293	378	671	7,275	1,325				1,325	2.0	2.0	653
2026	307	364	671	6,987	1,362				1,362	2.0	2.0	691
2027	323	348	671	6,644	1,401				1,401	2.1	2.1	730
2028	339	332	671	6,305	1,441				1,441	2.1	2.1	770
2029	356	315	671	5,949	1,483				1,483	2.2	2.2	812
2030	374	297	671	5,575	1,526				1,526	2.3	2.3	854
2031	392	279	671	5,183	1,569				1,569	2.3	2.3	898
2032	412	259	671	4,771	1,613				1,613	2.4	2.4	942
2033	433	239	671	4,338	1,657				1,657	2.5	2.5	986
2034	454	217	671	3,884	1,702				1,702	2.5	2.5	1,030
2035	477	194	671	3,407	1,748				1,748	2.6	2.6	1,077
2036	501	170	671	2,906	1,796				1,796	2.7	2.7	1,125
2037	526	145	671	2,380	1,846				1,846	2.7	2.7	1,175
2038	552	119	671	1,828	1,897				1,897	2.8	2.8	1,226
2039	580	91	671	1,248	1,949				1,949	2.9	2.9	1,278
2040	609	62	671	638	2,002				2,002	3.0	3.0	1,331
2041	639	32	671	0	2,058				2,058	3.0	3.0	1,384
2042					42,507	1,921	148	N/A	36,594	N/A	N/A	21,155
2043	10,000	9,794	19,794	N/A								

**Assumptions:**

- (1) Used the bond assumptions stated in section 51.06 (2)(X) of the regulations with debt service at 5.0%. Assumes the bond is issued in January 2012 with 24 months of interest only then 28 years of level debt service payments.
- (2) Column E and Column F are based on the preliminary tax revenues provided in the Department of Revenue Preliminary Certificate dated 9/12/2011.
- (3) Developer pays interest only payment for 24 months from assessments on the project components.
- (4) Net Construction Tax Revenues (Column F) are carried forward (Column H) for the purpose of meeting the 1.5x debt service test (Column J).



**Chestnut Hill Square**  
**I-Cubed Application**

**Outline of Infrastructure Development Assistance Agreement (“IDAA”)**

*Purpose of the agreement:*

This “IDAA” is an agreement between the state, the City of Newton, and the developer to discuss the mechanics of the issuance of bonds to pay for the Public Infrastructure Improvements, construction of the improvements and the payment of the debt service on the bonds.

*Approval and Bond Issuance Process:*

- 1) State approval of Preliminary Economic Development Proposal (“PEDP”);
- 2) City approval of PEDP;
- 3) Developer revisions to PEDP to develop a final Economic Development Proposal (“EDP”);
- 4) State final approval of EDP;
- 5) Execution of IDAA and other bond contracts; and
- 6) Bond issuance.

This document is divided into multiple categories which include, the following, which are standard for this type of documentation.

*Bond Issuance:*

The bonds may be issued in one or more tranches, equaling the total approved I-Cubed award. If less than the entirety of the award is issued in the first tranche, the state will agree to set aside the remainder of the award for a period of time (e.g. 5-10 years) so a request for additional bond issuance may be made when the conditions are satisfied. Once bonds are issued, the net proceeds are placed in a trust account administered by a trustee chosen by the state.

*Construction of Public Infrastructure Improvements:*

Developer (after complying with competitive bidding process) constructs the Public Infrastructure Improvements and seeks reimbursement for the costs of construction from the trust account (as described below). The City and the state have the right to monitor the construction and may hire an Independent Construction Agent (“ICA”) to oversee the construction (the costs of which are paid by the Developer).

*Reimbursement Requests:*

After incurring eligible costs, the Developer submits a Payment Requisition to the Trustee of the trust account. The Trustee will ask the ICA to verify that the work was completed and the costs related thereto. The ICA will then approve the requisition and direct the Trustee to release the specified amount from the trust account.

*Repayment of the Bonds:*

The debt service on the bonds is repaid by the net new state tax revenue created by the project. In the event there is insufficient revenue to cover the debt service, the City will levy an infrastructure assessment against the property for the amount of the shortfall. Upon receiving payment of the infrastructure assessment from the property owner, the City will transmit the funds to the state to pay the debt service.

*Failure to Pay Infrastructure Assessment:*

If the land owner fails to pay the infrastructure assessment described above, the City must immediately institute a collection process, including a tax lien foreclosure. While the collection process is ongoing, the state will need to be repaid and the City will draw the funds from the municipal liquidity reserve ("MLR"), which is established and funded (through cash or letters of credit) prior to issuance of any bonds and must always contain an amount equal to two times the anticipated debt service on the bonds. The lien imposed for payment of the infrastructure assessment has the same effect and priority as a real estate tax lien.

*Surplus Revenues*

Surplus revenues in any given year accrue as further protection against a shortfall. As a result, the obligations of the City and the Developer expire when the total accrued revenues exceed the bond principal and interest.



**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**by and among**

**THE COMMONWEALTH OF MASSACHUSETTS,**

**CITY OF NEWTON,**

**MASSACHUSETTS DEVELOPMENT FINANCE AGENCY,**

**CHS INFRASTRUCTURE DEVELOPER LLC**

**AND**

**CHS COMMERCIAL OWNER LLC**

**Dated as of \_\_\_\_\_, 20\_\_**

**Relating to:**

**Chestnut Hill Square Economic Development Project**

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## INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT

This INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT, dated as of \_\_\_\_\_, 20\_\_ (this "Agreement"), by and among THE COMMONWEALTH OF MASSACHUSETTS (the "Commonwealth"), acting by and through the Secretary of the Executive Office for Administration and Finance (the "Secretary"), the CITY OF NEWTON (the "City"), the MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, a body politic and corporate and public instrumentality of the Commonwealth established under Chapter 23G of the General Laws of the Commonwealth (with its successors, the "Agency"), CHS INFRASTRUCTURE DEVELOPER LLC, a [Delaware] limited liability company as developer of all or any portion of the Chestnut Hill Square Economic Development Project (hereinafter defined)(the "Developer") and CHS COMMERCIAL OWNER LLC, a Delaware limited liability company as owner, as of the date hereof, of the Assessment Parcel (the "Owner"):

### WITNESSETH:

WHEREAS, the Commonwealth is authorized by Sections 5 through 12A of Chapter 293 of the Acts of 2006 of the Commonwealth, as amended by Chapter 129 of the Acts of 2008 (the "Act"), to provide State Infrastructure Development Assistance (as defined in the Act) to the Agency to secure and pay the debt service payable on and with respect to bonds issued by the Agency to finance costs of public infrastructure improvements that are part of economic development projects approved by the Secretary; and

WHEREAS, the Developer and the City have filed with the Secretary the economic development proposal attached hereto as **Exhibit A** (as heretofore and hereafter amended and supplemented with the approval of the Secretary as provided in the Act, the "Economic Development Proposal") providing for the development by the Developer, the Owner and others of the Chestnut Hill Square Economic Development Project (as more fully defined herein, the "Economic Development Project") within the Economic Development District (hereinafter defined), anticipated to include the development by an affiliate of the Developer of a mixed-use project on the Assessment Parcel including retail, office, residential, commercial and parking garage components and the construction of certain public infrastructure improvements within or nearby the Economic Development Project (as herein defined, the "Public Infrastructure Improvements"); and

WHEREAS, as provided in the Act, the Secretary has filed with the Massachusetts Department of Revenue (the "Department"), the Agency and the Treasurer of the City his or her certificate (the "Secretary's Certificate") dated \_\_\_\_\_, 20\_\_ (the "Approval Date") declaring the Economic Development Proposal to be a Certified Economic Development Project (as defined in the Act); and

WHEREAS, the Economic Development Proposal provides for the issuance by the Agency of bonds (the "Bonds") in an aggregate principal amount not exceeding \_\_\_\_\_ Million Dollars (\$\_\_\_\_,000,000) to finance costs of the Public Infrastructure Improvements and costs of issuing the Bonds; and

WHEREAS, the Agency has approved the Preliminary Economic Development Proposal and has given preliminary approval to the issuance of the Bonds under and pursuant to a resolution adopted by its Board of Directors on July 14, 2011; and

WHEREAS, the Bonds will be issued in one or more tranches under and pursuant to a trust indenture (the "Indenture") to be executed and delivered by the Agency and the Trustee (as defined herein) upon or prior to the issuance of the Initial Bonds; and

WHEREAS, the Commonwealth has agreed to provide State Infrastructure Development Assistance for the Bonds pursuant to a Contract for State Infrastructure Development Assistance (the "Assistance Contract") to be executed and delivered by the Commonwealth and the Agency upon or prior to the issuance of any of the Bonds; and

WHEREAS, as provided in the Act, the Commonwealth may be reimbursed for all or a portion of the State Infrastructure Development Assistance provided for the Bonds from Local Infrastructure Development Assistance (defined herein) provided by the City; and

WHEREAS, as provided in the Act, the City, with the agreement of the Owner, may be reimbursed for Local Infrastructure Development Assistance provided for the Bonds from the proceeds of Infrastructure Assessments (defined herein) on the Assessment Parcel; and

WHEREAS, all of the preconditions provided in the Act to the issuance of the Bonds and the provision of State Infrastructure Development Assistance therefor have been satisfied or will be satisfied prior to the issuance thereof; and

WHEREAS, all acts and proceedings required by law necessary to constitute this Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms have been done and taken and the execution and delivery of this Agreement have been in all respects duly authorized by the respective parties hereto;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

#### **Section 1.01 Definitions.**

(a) In addition to the words defined in the preamble to this Agreement, the following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Agreement.

"Additional Bonds" shall have the meaning given such term in Section 2.02 hereof.

"Additional Bond Public Infrastructure Improvements" shall mean any Public Infrastructure Improvements funded from the proceeds of any Additional Bonds.

“Additional Public Infrastructure Improvements” means the Public Infrastructure Improvements described in **Exhibit B-2** hereto.

“Annual Administrative Fee,” with respect to the Initial Bonds, means the annual amount of \$2,500 payable to the Agency, provided that such amount may be increased upon the mutual agreement of the Secretary and the Agency to an amount not exceeding \$5,000; the amount of the Annual Administrative Fee for any Additional Bonds shall be in the amount set forth in an amendment or supplement to this Agreement executed by the parties hereto in connection with the issuance of such Additional Bonds.

“Annual Certification of New State Tax Revenues” means the annual certificate the Commissioner is required to make to the Secretary and the Treasurer in accordance with Section 10(a) of the Act, the Regulations, the DOR Guidance and this Agreement regarding his or her determination of the New State Tax Revenues generated within the Economic Development District in the prior Fiscal Year, which annual certificate shall be issued in accordance with the Regulations and the DOR Guidance and shall clearly identify, for the prior Fiscal Year: the total New State Tax Revenues from the Economic Development District for such Fiscal Year, including the Annual Data, Displacement Factors, total New Revenue and total Dedicated Revenue upon which such determination is based; the portion of such New State Tax Revenues that is allocable to each Project Component in accordance with Section 4.01(b) hereof, if applicable; the cumulative New State Tax Revenues for all prior Fiscal Years that is allocable to each Project Component in accordance with Section 4.01(b) hereof, if applicable; a statement as to whether the cumulative New State Tax Revenues allocable to a Project Component equal or exceed the Net Debt Service on the Bonds allocable to a Project Component in accordance with Section 4.01(b) hereof; the Shortfall, if any, allocable to each Project Component in accordance with Section 4.01(b) hereof; and the Surplus New State Tax Revenues, if any, available to offset the Shortfall, if any, allocable to each Project Component in accordance with Section 4.02(c) hereof.

“Annual Data” means the following data that the Parcel Owner of each Project Component is required to annually submit or cause project lessees to submit to the Department in accordance with the process provided in the Regulations and the DOR Guidance: (i) each lessee’s taxpayer ID number; (ii) aggregate actual wages paid by each lessee with respect to any Eligible New Jobs within any Commercial Component in the Economic Development Area; and (iii) aggregate retail sales generated by each lessee.

“Applicable Project Approvals” means all federal, Commonwealth and City laws, rules, regulations, permits, approvals and agreements applicable to the design and construction of the Public Infrastructure Improvements, including without limitation, Massachusetts Department of Transportation (“Mass DOT”) Section 61 Finding dated July 29, 2011, Mass DOT Highway Access Permit, Memorandum of Agreement regarding Hammond Pond Parkway Improvements by and between Massachusetts Historical Commission, NED Chestnut Hill Square LLC, Massachusetts Department of Environmental Protection and the Massachusetts Department of Conservation and Recreation dated \_\_\_\_\_, and \_\_\_\_\_.

“Assessment Parcel” means the parcel of land described on **Exhibit F**; provided, however, the Assessment Parcel may be further divided and/or made subject to a condominium

declaration to create a new or further Assessment Parcel(s) containing the non-residential Project Components of the Project as provided in Section 7.07(d) below.

“Assessor” means the Department Head of the City’s Office of Assessment Administration.

“Bond Issuance Fee” means the fee payable to the Agency from the proceeds of the Initial Bonds and any Additional Bonds upon their issuance in accordance with the Indenture in an amount not exceeding ~~[one-half of one percent (.50%)]~~ of the principal amount of such Bonds.

“Chestnut Hill Square Independent Consultant Analysis” means the I-Cubed Independent Consultant Analysis dated \_\_\_\_\_ prepared by BBP LLC for the Massachusetts Executive Office for Administration and Finance, as the same may have been updated by such consultant prior to the Secretary’s approval of the Economic Development Proposal in accordance with Section 51.13(2)(a) of the Regulations.

“Commercial Component” shall have the meaning given such term in the Act; provided, however, that if the Project includes more than one lot or condominium unit with a commercial use, each such lot or unit shall be deemed to contain a separate Commercial Component for purposes of this Agreement.

“Commissioner” means the Commissioner of the Department.

“Construction Contract” means any contract between a Parcel Owner and/or the Developer and a contractor, subcontractor, or supplier of materials or services or other party relating to the construction of the Public Infrastructure Improvements.

“Cost” means any cost of the Public Infrastructure Improvements, including without limitation the costs described in **Exhibit B-1 and B-2** hereto, incurred or to be incurred by the Developer and/or the Parcel Owners, including without limitation, the cost of construction, the cost of acquisition of all lands, structures, rights of way, franchises, easements and other property rights and interests and related riparian rights, the cost of demolishing, removing or relocating any buildings, structures or utilities on any lands to which such buildings, structures or utilities may be moved or relocated, the cost of preparing any lands including, without limitation, grading, excavation and environmental work; the cost of all labor, materials, machinery and equipment, financing charges, the cost of design, engineering, financial and legal services, plans, permits, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incidental to determining the feasibility or practicability of the Economic Development Project, administrative expenses for planning costs and other preliminary expenses and such other expenses as may be necessary or incidental to the Public Infrastructure Improvements, the financing thereof, placing of the same in operation and the issuance of Bonds.

“Debt Service,” with respect to any series of Bonds, means all principal, interest and premium, if any, due and payable on such Bonds in the amounts and on the dates set forth in the Assistance Contract or an amendment or supplement thereto.

“Dedicated Revenue” means state tax revenue, if any, applicable to an Eligible New Job which is dedicated to (i) the Massachusetts Bay Transportation Authority and the State and Local Contribution Fund under the provisions of Section 35T of Chapter 10 of the General Laws; (ii) the Massachusetts School Building Authority and the School Modernization and Reconstruction Trust Fund under the provisions of Section 35BB of Chapter 10 of the General Laws; (iii) the Massachusetts Convention Center Authority and the Convention Center Fund under the provisions of Section 10 of Chapter 152 of the Acts of 1997; and (iv) the Massachusetts Tourism Fund under the provisions of Section 35J of Chapter 10 of the General Laws; in each case at the rates and other terms provided under laws and regulations in effect as of the date of this Agreement.

“Department” means the Department of Revenue of the Commonwealth.

“Displacement Factors” means discount factors set forth in the Economic Development Proposal to be used in calculating New Revenue 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 have been determined by the Department based on the Independent Consultant Analysis in accordance with (i) the Regulations, (ii) the DOR Guidance, and (iii) the methodology underlying the Preliminary Certificate of the Commissioner dated \_\_\_\_\_ issued for the Economic Development Project, and are set forth in **Exhibit G** hereto.

“DOR Guidance” means Technical Information Release 08-18 as modified by Technical Information Release 09-10 and any other guidance issued by the Commissioner pursuant to Section 12 of the Act.

“Economic Development District” means the real property upon which the Economic Development Project shall be developed, as more fully described in the Economic Development Proposal and **Exhibit C** hereto.

“Economic Development Project” or “Project” means the Chestnut Hill Square Economic Development Project described in the Economic Development Proposal, including without limitation the acquisition, construction, expansion, improvement, or equipping of retail, office and such other commercial or residential facilities, or any combination thereof, described therein, including facilities to be used by governmental or non-profit entities, and all lands, buildings, and other structures, equipment and property or interests therein forming a part thereof, located or to be located wholly or partially within the Economic Development District, and owned or to be owned by the Developer, the Parcel Owner(s), or any other person, and all Public Infrastructure Improvements within or adjacent to such Economic Development Project necessary or desirable for development of such Economic Development Project as more fully described in such Economic Development Proposal.

“Eligible New Job” shall mean a new job deemed created in the Commonwealth on the first day for which Massachusetts personal income tax withholding is required in connection with the compensation paid to the employee employed within a Project Component or the first day for which Massachusetts estimated tax payments are payable by a partner of a partnership

occupying all or a portion of a Project Component; provided, however, that “Eligible New Jobs” attributable to a Project Component shall be determined by applying the Displacement Factors to total new jobs attributable to such Project Component.

“Event of Default” shall have the meaning given such term in Section 6.01 hereof.

“Fiscal Year” means the twelve month period commencing on July 1 in a calendar year and ending on the June 30 in the next succeeding calendar year.

“Governmental Entity” means, as applicable, the Commonwealth, the City or any other political subdivision, agency or instrumentality of the Commonwealth that will be own or be granted an easement in the Public Infrastructure Improvements financed in whole or in part by the Bonds following the completion thereof as provided in Section 3.06 hereof.

“Independent” means a person who is not an officer, director or employee of a party to this Agreement, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is an officer, director or employee of a party to this Agreement; provided, however, that the fact that such person is retained regularly by or regularly transacts business with an officer, director or employee of a party to this Agreement shall not make such person an employee within the meaning of this definition.

“Independent Construction Agent” means either (i) an Independent engineer or firm of engineers registered and qualified to practice the profession of engineering under the laws of the Commonwealth and hired by the City in accordance with the Regulations to perform the duties described in Section 3.04 hereof or (ii) with the approval of the Commonwealth, an employee of the City designated by the City to perform the duties described in clause (i) of this definition.

“Infrastructure Assessments” means amounts assessed upon the Assessment Parcels due to a Shortfall as provided in Section 10 of the Act and Article 4 of this Agreement.

“Initial Bond Public Infrastructure Improvements” means such portion of the Public Infrastructure Improvements that are funded from the proceeds of the Initial Bonds, the costs of which are described in **Exhibit B-1** hereto.

“Initial Bonds” means the Bonds described in Section 2.01 hereof.

“Issuer Expenses” means costs and expenses not otherwise funded by the Bonds that are incurred by the Agency in issuing and carrying the Bonds and otherwise in performing its obligations and duties pursuant to the Act, including without limitation the Annual Administrative Fee and all compensation, expenses, indemnities and other charges due the Trustee from time to time pursuant to the Indenture, provided that Issuer Expenses, exclusive of the Bond Issuance Fee and the Annual Administrative Fee, shall not exceed \$\_\_\_\_\_ per annum.

“Local Aid” shall have the meaning given to such term in Section 4.03(f).

“Local Infrastructure Development Assistance” shall have the meaning given such term in the Act and as more fully described in Section 4.02 hereof.

“Municipal Liquidity Reserve” means the liquidity reserve established by the City for an Assessment Parcel pursuant to Section 7 of the Act and the Regulations as more fully described in Section 4.06 hereof.

“Net Debt Service” means the Debt Service allocable to a Project Component less any payments previously made to the Commonwealth on account of a Shortfall allocable to any portion of such Debt Service.

“New Revenue” means revenue derived from a Commercial Component of the Economic Development Project by the creation of any Eligible New Jobs or by new commercial activity that would otherwise not have taken place in the Commonwealth on said Commercial Component. “New Revenue” shall not include any revenue that would have been realized by the Commonwealth if the Economic Development Project had not been carried out under the Act, 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 a new commercial activity within the Economic Development District.

“New State Tax Revenues” means any New Revenue, less any Dedicated Revenue, collected by the Commonwealth from: (i) the taxes imposed by Chapter 62 of the General Laws on wages as defined in Section 1 of Chapter 62B of the General Laws and on a partner’s distributive share of earned income of a partnership that is subject to taxation as Part B taxable income in accordance with Section 17 of said Chapter 62; (ii) the excises imposed by Section 2 of Chapter 64H of the General Laws; and (iii) the excises imposed by Section 3 of Chapter 64G of the General Laws, Section 22 of Chapter 546 of the Acts of 1969 and paragraph (a) of Section 9 of Chapter 152 of the Acts of 1997; in each case at rates and other terms and conditions of such taxes and excises in effect on the date of execution of this Agreement.

“Parcel Owner,” at any time with respect to an Assessment Parcel, means the owner of record for such Assessment Parcel as shown in the records of the Middlesex Registry of Deeds, and shall include Owner and each successive owner of record during their respective period of ownership; provided that a mortgagee or other person or entity that holds an interest solely to secure performance of an obligation is not a Parcel Owner unless and until such person takes actual possession and records legal title to the entirety of such Assessment Parcel by foreclosure or other proceeding in lieu thereof. The parties hereto acknowledge that an initial Assessment Parcel may be further subdivided and/or made subject to condominium declaration(s) to create a new or further Assessment Parcel(s), as more particularly described in Section 7.07(d) below, in which case the term “Parcel Owner” shall refer to the fee owner of the applicable non-residential lot or unit as the context so requires, and each such fee owner shall be deemed a separate Parcel Owner for all purposes under this Agreement.

“Payment Requisition” means a document, substantially in the form of Exhibit D hereto, to be used by the Developer or the Parcel Owners or their respective designees in requesting payment of or reimbursement for Costs of Public Infrastructure Improvements or portions thereof, as provided in Section 3.04.

“Person” means any natural or corporate person, including bodies politic and corporate, public departments, offices, agencies, authorities, and political subdivisions of the Commonwealth, corporations, trusts, societies, associations, and partnerships and subordinate instrumentalities of anyone or more political subdivisions of the Commonwealth.

“Plans and Specifications” means the plans and specifications for the Public Infrastructure Improvements prepared by or on behalf of the Developer in a manner consistent with the Applicable Project Approvals and approved by the City.

“Project Component” means, singly, not more than one Commercial Component of the Economic Development Project located on the Assessment Parcel, exclusive of any Public Infrastructure Improvements.

“Project Fund” shall mean the fund so designated in the Indenture and any similar fund in any financing document for Additional Bonds.

“Public Infrastructure Improvements” shall have the meaning given such term in the Act.

“Refunding Bonds” shall have the meaning given such term in Section 2.02 hereof.

“Regulations” means Chapter 51.00 of Title 801 of the Code of Massachusetts Regulations (801 CMR 51).

“Shortfall” means the amount determined annually by the Department in accordance with Section 4.02 hereof and certified by the Commissioner in the Annual Certification of New State Tax Revenues as the shortfall amount, if any, allocable to a Project Component.

“State Treasurer” means the Treasurer and Receiver General of the Commonwealth.

“Surplus New State Tax Revenues” shall have the meaning given such term in Section 4.02 hereof.

“Treasurer” means the Collector-Treasurer of the City.

“Trustee” means the trustee under the Indenture and any successor thereto.

(b) Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, words importing persons shall include firms, associations and corporations and words of the masculine gender shall include correlative words of the feminine and neuter genders.



## ARTICLE 2

### THE BONDS

#### Section 2.01 The Initial Bonds.

(a) The Agency shall issue the Initial Bonds upon receipt of a certificate of the Secretary that the conditions provided in Paragraph (d) of this Section 2.01 have been satisfied. The Initial Bonds shall be issued in the aggregate principal amount, shall mature on the date or dates and in the amounts, shall bear interest at the rate or rates, shall be subject to redemption prior to maturity at the redemption price or prices, and shall otherwise bear terms and conditions as shall be approved by the Commonwealth, the City, the Developer and the Agency and set forth in the Indenture.

(b) As provided in the Act and the Indenture, the Initial Bonds shall be payable solely from State Infrastructure Development Assistance paid by the Commonwealth with respect to Debt Service on the Initial Bonds in accordance with the Assistance Contract and shall be secured by a pledge of and security interest in such State Infrastructure Development Assistance and the Agency's rights to payment of the same and all moneys and securities on deposit in the accounts established within the debt service fund established under the Indenture, in each case subject only to the provisions of the Indenture permitting the application of amounts held thereunder for the purposes and on the terms and conditions set forth in the Indenture.

(c) The proceeds of the Initial Bonds, excluding investment earnings thereon, shall be applied to Costs of the Initial Bond Public Infrastructure Improvements and costs of issuing the Initial Bonds, including without limitation the Bond Issuance Fee, as provided herein and in the Indenture.

(d) Notwithstanding anything herein to the contrary, the parties hereto agree that the issuance of the Initial Bonds shall be subject to the satisfaction of the following conditions:

(i) The Board of Directors of the Agency shall have given final approval to the issuance of the Initial Bonds;

(ii) The Agency and the Trustee shall have executed and delivered the Indenture and the Commonwealth and the Agency shall have executed and delivered the Assistance Agreement;

(iii) The Municipal Liquidity Reserve shall be funded pursuant to Section 4.06 hereof in the amount applicable to the Initial Bonds;

(iv) Satisfaction of the conditions, if any, to the issuance of the Initial Bonds provided in the Secretary's Certificate; and

(v) Continued compliance by the Developer and the Parcel Owners with the Act and the Regulations.

## **Section 2.02 Additional Bonds; Refunding Bonds.**

(a) In addition to the Initial Bonds, upon request of the Secretary, the Agency shall issue one or more additional series of Bonds (herein "Additional Bonds") for the costs of Additional Bond Public Infrastructure Improvements and costs of issuing such Additional Bonds subject to the satisfaction of the following conditions:

(i) Reserved;

(ii) The Board of Directors of the Agency shall have given final approval for the issuance of such Additional Bonds;

(iii) Execution and delivery by the Commonwealth and the Agency of one or more amendments or supplements to the Assistance Contract providing for the payment of State Infrastructure Development Assistance by the Commonwealth with respect to the Debt Service on such Additional Bonds;

(iv) Execution and delivery by the parties hereto of one or more amendments or supplements to this Agreement setting forth the terms of such Additional Bonds; and

(v) The funding of the Municipal Liquidity Reserve in the amount applicable to such Additional Bonds in accordance with Section 4.06 hereof.

(b) The Commonwealth and the Agency agree to reserve for a period of ten (10) years after the date of this Agreement sufficient capacity under Section 7(d) of the Act to provide for the issuance of Additional Bonds in a principal amount equal to the difference between the aggregate principal amount of the Initial Bonds and \$\_\_\_\_,000,000.00.

(c) In addition to the Initial Bonds and any Additional Bonds, upon the request of the Secretary the Agency shall issue one or more additional series of Bonds (herein "Refunding Bonds") for the purpose of refunding any Bonds theretofore issued and outstanding and paying costs of issuing such Additional Bonds, subject to (1) adoption by the Board of Directors of the Agency of an appropriate resolution approving the issuance of such Refunding Bonds and (2), except as otherwise provided herein, the approval of the Parcel Owners, the Developer and the City. No approval of the Parcel Owners, the Developer or the City shall be required for the issuance of Refunding Bonds unless their issuance would result in an increase in Debt Service accrued or payable in any Fiscal Year or in the aggregate; or an increase in the Annual Administrative Fee; or extend the final maturity of the Bonds; or require the payment of additional Bond Issuance Fees by the City, the Parcel Owners, or the Developer or, in the reasonable opinion of the Parcel Owners, the Developer or the City, materially adversely affect the obligations of the Parcel Owners, the Developer or the City hereunder or under the Indenture or any other instrument or agreement evidencing or securing the Initial Bonds or any Additional Bonds or Refunding Bonds. Upon issuance of any series of Refunding Bonds, (i) the Agency and the Trustee shall execute and deliver an amendment or supplement to the Indenture providing for the issuance of and security for such Refunding Bonds; (ii) the Commonwealth and the Agency shall execute and deliver an amendment or supplement to the Assistance Contract providing for the payment of State Infrastructure Development Assistance by the

Commonwealth with respect to the Debt Service on such Refunding Bonds and reflecting the reduction, if any, in the State Infrastructure Development Assistance payable by the Commonwealth with respect to Debt Service on the Bonds refunded by such Refunding Bonds and the Infrastructure Assessments and Local Infrastructure Development Assistance payable hereunder with respect to such State Infrastructure Development Assistance; (iii) the parties hereto shall execute an amendment or supplement to this Agreement setting forth the terms of such Refunding Bonds; and (iv) the Developer, the Parcel Owners and the City shall execute and deliver such other documents, certifications and opinions required by the Commonwealth and the Agency to comply with federal and state laws and regulations.

(d) Additional Bonds and Refunding Bonds, if any, issued by the Agency in accordance with this Section 2.02 shall be issued in the aggregate principal amount, shall mature on the date or dates and in the amounts, shall bear interest at the rate or rates, shall be subject to redemption prior to maturity at the redemption price or prices, and shall otherwise bear terms and conditions as shall be approved by the Commonwealth, the City, the Developer, the Parcel Owners and the Agency and set forth in the Indenture. As provided in the Act, Additional Bonds and Refunding Bonds, if any, shall be payable solely from State Infrastructure Development Assistance paid by the Commonwealth with respect to Debt Service on such Bonds in accordance with the Assistance Contract as amended or supplemented to reflect the issuance of such Bonds and shall be secured by a pledge of and security interest in such State Infrastructure Development Assistance and the Agency's rights to payment of the same as provided in the Act and the Indenture, in each case subject only to the provisions of the Indenture permitting the application of amounts held thereunder for the purposes and on the terms and conditions set forth in the Indenture.

## ARTICLE 3

### PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 3.01 Application of Article 3.** Notwithstanding anything in this Agreement or the Economic Development Proposal to the contrary, the parties to this Agreement agree that the provisions of this Article 3 shall apply to the Parcel Owners (to the extent express set forth in this Article 3), the Developer and, as the context so requires, to any contractor carrying out the development and construction of the Public Infrastructure Improvements under the Construction Contract. The Developer covenants and agrees to include in any Construction Contract such provisions as shall be necessary and appropriate to require such contractor to comply with the applicable provisions of this Article 3.

### **Section 3.02 Funding of Costs.**

(a) The Agency shall issue the Initial Bonds and, upon compliance with Section 2.02 hereof, any Additional Bonds in accordance with the Indenture and shall deposit the net proceeds thereof in the funds and accounts provided in the Indenture. Neither the Commonwealth, the City nor the Agency makes any warranty, express or implied, that the proceeds of the Bonds deposited and held in the Project Fund under the Indenture will be sufficient to pay all of the Costs of the Public Infrastructure Improvements to be financed by the Bonds. The Commonwealth, the City and the Agency shall not be obligated to pay for any Costs

of the Public Infrastructure Improvements except from amounts deposited and held in the Project Fund or such similar fund. The Owner further acknowledges that any obligation of the Parcel Owners to pay Infrastructure Assessments as provided herein and in the Act is not in any way dependent on the sufficiency of proceeds of the Bonds or other amounts under the Indenture to pay for all of the Costs of the Public Infrastructure Improvements; but such obligation is expressly contingent upon (i) the issuance of the Bonds and (ii) except to the extent that an Event of Default shall have occurred and is continuing and the Commonwealth shall have exercised the remedy provided in Section 6.03(d) hereof, the availability of the proceeds of the Bonds to the Developer for such purposes.

(b) The Developer further acknowledges and agrees that any insufficiency of amounts in the Project Fund to pay the Costs of Public Infrastructure Improvements financed by the Initial Bonds or any Additional Bonds, as applicable, shall in no way diminish the obligations of the Developer with respect to the construction of, or contributions for, the Public Infrastructure Improvements to which the Initial Bonds or such Additional Bonds pertain as provided in the Economic Development Proposal and any Applicable Project Approvals.

### **Section 3.03 Construction of Public Infrastructure Improvements.**

(a) All of the Public Infrastructure Improvements shall be constructed by or caused to be constructed by the Developer in substantial conformance with the Economic Development Proposal, in compliance with the Applicable Project Approvals and pursuant to the Plans and Specifications. The Developer shall be solely responsible for awarding and administering all Construction Contracts for the construction of the Public Infrastructure Improvements and the Commonwealth, the City and the Agency shall not have any obligation to award or administer any such Construction Contract or have any liability thereunder. Nothing in this Agreement shall alter, in any respect, any of the requirements of the Applicable Project Approvals with respect to the construction of the Public Infrastructure Improvements financed in whole or in part by the Bonds, and, except as the Secretary and the City shall otherwise agree, the Developer shall observe the requirements of the Applicable Project Approvals with respect to the construction of such Public Infrastructure Improvements. The Developer shall perform or cause the performance of all of its obligations hereunder and under the Applicable Project Approvals with respect to such Public Infrastructure Improvements and shall conduct all operations with respect to the construction of such Public Infrastructure Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by a duly qualified person in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Public Infrastructure Improvements financed hereunder.

(b) In performing this Agreement and carrying out the construction of the Public Infrastructure Improvements, the Developer is an independent contractor and not the agent or employee of the Commonwealth, the City or the Agency, and the foregoing shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer. The City and the Commonwealth shall have the right to inspect and monitor the construction of the Public Infrastructure Improvements and may hire the

Independent Construction Agent for this purpose. In addition, the City shall hire the Independent Construction Agent subject to the approval of the Commonwealth to inspect the Public Infrastructure Improvements and the construction thereof as provided in Section 3.04 hereof in order to process Payment Requisitions as provided herein. The cost of the Independent Construction Agent shall be paid by the Developer and shall be a Cost eligible for reimbursement hereunder from the proceeds of the Initial Bonds or the Additional Bonds, as applicable. The Commonwealth, the City and the Agency shall have no responsibility as to the adequacy of the completed Public Infrastructure Improvements.

(c) Notwithstanding anything herein or in the Indenture to the contrary, prior to disbursement to the Developer of any amount in the Project Fund allocable to the Initial Bonds or to any Additional Bonds the Developer shall provide evidence to the Secretary and the City of having complied with the competitive procurement process for the selection of a contractor or contractors for the construction of the Public Infrastructure Improvements to be financed thereby that was proposed by the Developer in the Economic Development Proposal, with any modifications to the process that may have been required by the Secretary in his final approval of the Economic Development Proposal. The Agency and the Trustee may conclusively rely on a certificate of the Secretary that the conditions provided in this Section 3.03(c) have been satisfied with respect to any Additional Infrastructure Improvements financed hereunder.

(d) Prior to the disbursement to the Developer of any amount in the Project Fund, either (i) the Developer shall have caused its contractors for the Additional Bond Public Infrastructure Improvements to have obtained payment, performance, and lien bonds from providers satisfactory to the Secretary and payable to the Developer and the Agency as obligees in an amount not less than the amount of the contract between the Developer and contractor to secure the contractors' obligations to complete the construction of such Additional Bond Public Infrastructure Improvements, or (ii) the Developer shall have provided a guarantee to complete such construction in form and substance satisfactory to the Secretary and the City.

### **Section 3.04 Disbursement of Bond Proceeds.**

(a) In order to receive payment or reimbursement for Costs of Public Infrastructure Improvements from the Project Fund under the Indenture or any such fund under any financing document for Additional Bonds, the Developer shall deliver a Payment Requisition for such work to the Trustee (with a copy thereof to the Agency) substantially in the form of **Exhibit D** hereto, together with all attachments and exhibits required by **Exhibit D** or the Indenture to be included therewith, including without limitation, an appropriately completed and executed AIA form, if applicable, and, except as otherwise provided herein, a certificate and approval of the Independent Construction Agent substantially in the form of **Exhibit E** hereto. The Developer shall also comply with all conditions set forth in the Indenture in connection with the payment or reimbursement for Costs of Public Infrastructure Improvements from the Project Fund.

(b) Upon receipt of a Payment Requisition for payment or reimbursement for Costs of Public Infrastructure Improvements financed by the Bonds, the Independent

Construction Agent shall conduct a review in order to (i) verify that the work with respect to the Public Infrastructure Improvement for which payment is requisitioned was completed, (ii) verify that all Applicable Project Approvals pertaining to the construction of any such Public Infrastructure Improvements which has been completed to the date of such Payment Requisition have been received or approved, as applicable, and (iii) verify and approve the Cost of such work specified in such Payment Requisition. The Developer agrees to cooperate with the Independent Construction Agent in conducting each such review and to provide the Independent Construction Agent with any third party quality control testing that was conducted by or on behalf of the Developer on such Public Infrastructure Improvements during the applicable billing period and such additional information and documentation as is reasonably necessary for the Independent Construction Agent to conclude each such review. All fees and expenses of the Independent Construction Agent may be paid or reimbursed from the proceeds of the Bonds.

(c) Within ten (10) business days of receipt of any Payment Requisition requiring the approval of the Independent Construction Agent, the Independent Construction Agent shall (i) execute its certificate and approval of such Payment Requisition and forward the same to the Agency and the Trustee for payment or (ii) in the event the Independent Construction Agent disapproves the Payment Requisition, give written notification to the Developer and the Agency of the Independent Construction Agent's disapproval, in whole or in part, as applicable, of such Payment Requisition, specifying the reasons for such disapproval, in whole or in part, as applicable, of such Payment Requisition, and the additional requirements to be satisfied for approval of such Payment Requisition. If a Payment Requisition seeking reimbursement is approved only in part, the Independent Construction Agent shall specify the extent to which the Payment Requisition is approved and shall deliver such partially approved Payment Requisition and its certificate and approval of such partial payment to the Agency and the Trustee, and any such work shall be processed for partial payment notwithstanding such partial denial.

(d) Within five (5) business days of receipt of a Payment Requisition and, if required by this Section 3.04, approval by the Independent Construction Agent, the Agency shall cause the Trustee to pay to or upon the order of the Developer under the applicable provisions of the Indenture the amount provided in such Payment Requisition, or such lesser amount as provided in paragraph (c) of this Section 3.04, from available moneys in the Project Fund. Any Payment Requisition not paid due to an insufficiency of funds in such fund as herein provided shall be paid in accordance with Section 3.02 of this Agreement.

(e) Upon final payment of all Costs of Public Infrastructure Improvements to be funded from the proceeds of the Initial Bonds or any series of Additional Bonds, as evidenced by the filing with the applicable Trustee of a certificate of the Developer approved by the Secretary, any balance remaining in the Project Fund under the Indenture shall be applied as provided in such Indenture.

### **Section 3.05 Insurance Requirements During Construction Period of Public Infrastructure Improvements.**

(a) In addition to the insurance requirements, if any, of the Applicable Project Approvals, at all times prior to the final completion of any Public Infrastructure Improvements funded by the Initial Bonds or Additional Bonds, the Developer shall maintain and deliver to the

Commonwealth, the City and the Agency evidence of and keep in full force and effect, or cause the development manager and general contractor(s) for such Public Infrastructure Improvements to maintain and deliver to Commonwealth, the City and the Agency evidence of and keep in full force and effect, not less than the following coverage and limits of insurance: (a) Workers' Compensation and Employer's Liability - Workers' Compensation coverage equal to at least the greater of (i) such limits as are required by law and (ii) \$500,000 per injury, \$500,000 per accident and \$500,000 per disease, and Employer's Liability - limits of at least \$500,000 per occurrence; (b) Comprehensive General Liability - limits of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and (c) Automotive Liability - Combined Single Limit - \$1,000,000. The automobile and general liability policies shall be accompanied by an umbrella policy with a combined limit of \$10,000,000. In addition, the Developer shall cause the architects, engineers and other professionals engaged by the Developer for the design and engineering of the Public Infrastructure Improvements to deliver to the Commonwealth, the City, and the Agency evidence of, and shall require such design professionals to keep in full force and effect while under contract with the Developer, professional liability insurance with limits of at least \$1,000,000 in the aggregate.

(b) All policies of insurance shall include the Commonwealth, the City and the Agency as an additional insured, shall be issued by companies licensed or approved by the Commonwealth's Insurance Commissioner and rated A-VII or better in the most recent edition of Best's Insurance Guide with respect to primary levels of coverage and shall be issued and delivered in accordance with Commonwealth law and regulations.

(c) At or prior to the issuance of any Bonds the proceeds of which will be used to fund Costs of Public Infrastructure Improvements prior to completion of construction thereof, the Developer shall deliver to the Commonwealth, the City and the Agency certificates of insurance for all required policies and endorsements thereto on forms which are acceptable to Commonwealth, the City and the Agency. In addition, all of the Developer's insurance policies shall contain an endorsement providing that written notice shall be given to Commonwealth, the City and the Agency at least 30 calendar days prior to termination, cancellation or reduction of coverage in the policy.

(d) The Developer may effect the insurance coverage provided herein under blanket insurance policies; provided, however, that (i) such policies are written on a per-occurrence basis, (ii) such policies comply in all other respects with the provisions of this Section 3.05, and (iii) the protection afforded under any such policy shall be no less than that which would be available under a separate policy relating only to this Agreement.

(e) The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Developer are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Developer under this Agreement and the Applicable Project Approvals or constitute a representation or warranty by Commonwealth, the City or the Agency that the coverage provided by such insurance is adequate for purposes of the Developer or for any other purpose.

(f) In addition to the insurance requirements of this Section 3.05, the Contractor shall furnish evidence to the Department that, with respect to the operations the

Contractor performs, the Contractor carries an umbrella insurance policy providing for a limit of not less than \$10,000,000.

(g) The Contractor's insurance policies required under clause (f) of this Section 3.05 shall name as additional insured those property owners who have granted temporary easements (grantor), the grantor's mortgagee, the grantor's tenant and the grantor's managing agent; and shall, upon request, provide evidence thereof.

**Section 3.06 Public Infrastructure Improvements Upon Completion.**

(a) The parties acknowledge that the Public Infrastructure Improvements are, for the most part, located within lands owned by the Commonwealth of Massachusetts and/or the City and shall be maintained by the Commonwealth and/or City, as applicable, as needed, following completion thereof. For lands not currently owned by the City and/or the Commonwealth, the Developer or the applicable Parcel Owner shall grant to the City or the Commonwealth, as applicable, one or more easements for the Public Infrastructure Improvements, as necessary.

(b) The Developer or the Parcel Owners, as applicable, shall be solely responsible for all costs and expenses related to developing, holding, operating, and maintaining all lands and other properties within the Economic Development District other than the Public Infrastructure Improvements financed in whole or in part by the Bonds. As provided in the Economic Development Proposal, easements granted to the City and/or the Commonwealth for Public Infrastructure Improvements shall impose no obligation upon the Developer and/or the Parcel Owners, and the Developer and/or the Parcel Owners shall have no obligation to, operate or maintain such Public Infrastructure Improvements.

**Section 3.07 Equal Opportunity Provisions.**

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

(i) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, sexual orientation or handicap. 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 handicap. 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, provided that notice of such information in compliance with federal law shall be deemed compliance with the provisions of this paragraph.

(ii) 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 handicap.

(iii) In the event of the Developer's non-compliance with the nondiscrimination clauses of this Agreement, which non-compliance is in violation of any law or regulation in force in the Commonwealth and binding upon the Developer, 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 Commonwealth's Attorney General for appropriate legal proceedings.

(b) The Developer hereby agrees that it will incorporate or cause to be incorporated into each Construction Contract, or modification thereof, which is paid for in whole or in part with proceeds of the Bonds, an equal opportunity clause substantially in the following form:

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

(i) The contractor will not discriminate against any employee or applicant for employment because race, color, religion, sex, national origin, sexual orientation, or handicap. 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 handicap. 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.

(ii) 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 handicap.

(iii) 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 this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) The contractor will furnish all information and reports reasonably required by the Secretary, and will permit access to his books, records, and accounts by the Secretary for purposes of investigation to ascertain compliance with the provisions of this Agreement and any applicable orders of the Secretary.

(v) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or any applicable orders of the Secretary, this contract may be canceled, terminated, or suspended in whole or in part.

(vi) The contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (v) 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 his or her designee in obtaining the compliance of contractors and subcontractors with the provisions of this Section and relevant orders of the Secretary, and to furnish the Secretary such information as he or she may reasonably require for the supervision of such compliance, and to otherwise assist the Secretary in the discharge of his or her responsibility for securing compliance. The Developer further agrees that the Developer will refrain from entering into any Construction Contract or modification thereof subject to this Agreement with a contractor debarred from federal or state government construction contracts. In addition, the Developer agrees that if the Developer 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 Commonwealth's Attorney General for appropriate legal proceedings.

#### ARTICLE 4

### INFRASTRUCTURE ASSESSMENTS AND LOCAL INFRASTRUCTURE DEVELOPMENT ASSISTANCE

#### **Section 4.01 Infrastructure Assessments for Shortfalls against Project Components.**

(a) The Project Components shall be responsible for any Shortfall with respect to Debt Service on the Bonds determined by the Commissioner in accordance with Section 4.02 hereof. In the event of a Shortfall, each Project Component will be severally liable for its share of such Shortfall with the Shortfall allocated as set forth in a notice, given from time to time, from Parcel Owner to the City and the Secretary (the "Allocation Notice"). In accordance with Section 10 of the Act and this Article 4, the City shall be obligated to pay Local Infrastructure Development Assistance to reimburse the Commonwealth for the amount of the Shortfall, if any, annually determined by the Commissioner. Local Infrastructure Development Assistance shall constitute a general obligation of the City to which its full faith and credit shall be pledged.

(b) Pursuant to Section 10(d) of the Act, Owner hereby agrees to allow the City to levy and collect an Infrastructure Assessment against the Project Components to the extent a Shortfall has been allocated to such Project Component in accordance with the Allocation Notice. As further provided in Section 10(d) of the Act, the obligation of the City to provide Local Infrastructure Assistance for any such Shortfall is assumed by the Owner and is limited to Infrastructure Assessments levied by the City and amounts drawn from the Municipal

Liquidity Reserve in accordance with Section 4.03(d) below, but such assumption and limitation shall not relieve the City from its general obligation set forth in Section 4.01(b) above or preclude the Commonwealth from exercising its rights under Section 4.03(f) below. The foregoing obligations of the Owner shall run with the land and be binding on Owner's successors and assigns as Parcel Owners as set forth in Section 7.07 (and inure to the benefit of the City and its successors and assigns).

#### **Section 4.02 Annual Certification of New State Tax Revenues.**

(a) The Commissioner shall issue an Annual Certification of New State Tax Revenues for the Fiscal Year which includes the Approval Date, and for each Fiscal Year thereafter for as long as the City shall be obligated to provide Local Infrastructure Development Assistance hereunder, by not later than December 1 of the following Fiscal Year. To the extent necessary to permit the Commissioner to make the determination as to New State Tax Revenues and to issue the Annual Certification of New State Tax Revenues by December 1 of such Fiscal Year, Parcel Owners shall provide or shall require Project lessees to provide the Annual Data directly to the Commissioner not later than August 31 of such Fiscal Year, provided, however, that the failure to provide such information due to unavailability shall not constitute an Event of Default hereunder. In the event that the Annual Data is not provided to the Commissioner by August 31, the Annual Certification of New State Tax Revenues shall be based on information otherwise available to the Commissioner. Notwithstanding the preceding sentence, the Commissioner may, in his or her sole discretion, waive the August 31 deadline if the Annual Data is provided prior to December 1 with sufficient time for the Commissioner to make the required determination as to New State Tax Revenues prior to December 1. The Annual Data submitted to the Commissioner will be kept confidential by the Department to the extent required or permitted by law.

(b) Prior to issuing its Annual Certification of New State Tax Revenues, the Commissioner will submit its draft findings to the City, the Developer and each Parcel Owner for review. The City, the Developer and each Parcel Owner will have at least thirty (30) days from the issuance of the draft findings to offer comment. If the City or a Parcel Owner disagrees with any part of the draft, it must give a specific and verifiable analysis that leads to the disagreement, and must state its alternate conclusions. The Commissioner will review the comments, and within thirty (30) days of his or her receipt, the Commissioner will notify the City and such Parcel Owner whether the Commissioner accepts the comment, accepts the comment in part, or rejects the comment.

(c) If the Commissioner determines that the aggregate amount of New State Tax Revenues generated in any Fiscal Year, plus the amount of Surplus New State Tax Revenues for such Fiscal Year, is less than the aggregate Debt Service for such Fiscal Year, the Commissioner shall declare a Shortfall. For purposes of the foregoing, the term "Surplus New State Tax Revenues" for any Fiscal Year shall mean (i) the cumulative aggregate amount by which the New State Tax Revenues generated in any prior Fiscal Year exceeded the Debt Service for such Fiscal Year; plus, (ii) the aggregate amount of New State Tax Revenues generated from and after the Approval Date until the first Fiscal Year in which Debt Service is payable on the Initial Bonds; less (iii) the amount, if any, determined under clause (i) and clause

(ii) which has been previously allocated to a Shortfall or has been applied to prepay a Parcel Owner's obligation for Infrastructure Assessments pursuant to Section 4.05 hereof.

(d) In the event that the Commissioner's Annual Certification of New State Tax Revenues indicates that there was a Shortfall in the prior Fiscal Year for which the City is required to provide Local Infrastructure Development Assistance, the Commonwealth shall notify the City, the Developer and the Parcel Owners of the amount of such Shortfall and the amount thereof allocable to each Project Component, as applicable, within ten (10) days following the issuance of the Annual Certification of New State Tax Revenues by the Commissioner.

(e) Notwithstanding the foregoing provisions of this Section 4.02, once the cumulative New State Tax Revenues determined by the Commissioner in accordance with this Section 4.02 equal or exceed an amount equal to the principal amount of the Bonds plus an amount equal to all interest accrued on the Bonds to such date of determination, (i) the City shall have no further obligation to provide Local Infrastructure Development Assistance to the Commonwealth with respect to the Bonds, (ii) no further Infrastructure Assessments shall be levied against the Project Components with respect to such Debt Service, (iii) the Developer and the Parcel Owners shall have no further obligation to fund a Municipal Liquidity Reserve with respect to such Debt Service, and (iv) the Commissioner will confirm the foregoing determinations in a certificate delivered to the City, the Developer and the Parcel Owners.

#### **Section 4.03 Collection of Infrastructure Assessments for Shortfalls.**

(a) An Infrastructure Assessment against an Assessment Parcel shall be assessed by the City in the first Fiscal Year after the Fiscal Year in which the applicable Shortfall occurred, and shall be collected and paid to the Commonwealth not later than July 1 of the second Fiscal Year following the Fiscal Year in which the Shortfall occurred.

(b) Within sixty (60) days following receipt of notice of a Shortfall allocable to a Project Component, the Assessor shall levy an Infrastructure Assessment against the applicable Assessment Parcel(s) in accordance with the Allocation Notice and shall notify the Treasurer of the amount due for the Infrastructure Assessment. The Infrastructure Assessment levied on any Assessment Parcel shall not exceed the amount of the Shortfall which is allocated to such Assessment Parcel. Such Infrastructure Assessment shall be payable on a schedule specified by the Treasurer, but in any event not sooner than thirty (30) days after the Parcel Owner's receipt of notice of the Infrastructure Assessment. Within ten (10) days after the receipt of the Parcel Owner's payment of the Infrastructure Assessment, the City shall remit to the Commonwealth the full amount thereof. Notwithstanding the foregoing, the Parcel Owners shall have no obligation to pay Infrastructure Assessments to the extent a Shortfall results from a change in state law reducing the rate of the taxes or excises or increasing the amount of Dedicated Revenues included in the calculation of New State Tax Revenues.

(c) In the event that a Parcel Owner shall fail to pay all or any portion of an Infrastructure Assessment made against an Assessment Parcel pursuant to this Section 4.03 on or prior to the due date provided therefor in Section 4.03(b), the City shall promptly institute such collection procedures as are available to it under law, including the initiation of tax lien

foreclosure proceedings, and shall use all lawful means and diligent efforts to collect the full amount of the Infrastructure Assessment.

(d) In the event that a Parcel Owner shall fail to pay all or any portion of an Infrastructure Assessment made against an Assessment Parcel pursuant to this Section 4.03 on or prior to the date such Shortfall is to be reimbursed to the Commonwealth in accordance with Paragraph (a) of this Section 4.03, the City shall withdraw the amount of the deficiency from the Municipal Liquidity Reserve, first from any cash comprising the Municipal Liquidity Reserve, and in the event such cash is insufficient, by drawing on any letter of credit securing such Municipal Liquidity Reserve in an amount not to exceed the deficiency.

(e) In the event that the City withdraws funds from a Municipal Liquidity Reserve to pay all or any portion of a Shortfall and subsequently collects all or any portion of the Infrastructure Assessment the non-payment of which gave rise to the withdrawal from such Municipal Liquidity Reserve, such collected funds shall be applied first to satisfy all costs and expenses incurred by the City after the date of non-payment in connection with the collection of the Infrastructure Assessment, including without limitation, reasonable fees and expenses of attorneys and other costs of litigation and enforcement proceedings, then to pay to the City all interest accrued after the date of non-payment of the Infrastructure Assessment at the statutory rate, and the balance shall be deposited in the applicable Municipal Liquidity Reserve to satisfy any future Shortfall.

(f) As provided in the Act, to the extent the City shall fail to pay or provide for any or any portion of a Shortfall payable to or for the credit of the Commonwealth on or before the date by which such payment is due in accordance with Paragraph (a) of this Section 4.03, the Secretary may certify the amount that is unpaid to the State Treasurer and the State Treasurer shall reduce amounts distributable or payable by the Commonwealth to the City in accordance with Section 20 of Chapter 59 of the General Laws (“Local Aid”) by the unpaid amount. Notwithstanding anything in this Agreement or the Regulations to the contrary, the parties agree that (i) in no event shall the City’s Local Aid be reduced or the City be obligated to provide Local Development Infrastructure Assistance to the extent a Shortfall results from (x) a change in state law reducing the rate of the taxes or excises or increasing the amount of Dedicated Revenues included in the calculation of New State Tax Revenues or (y) tax credits available to the Parcel Owner of a Project Component that are granted by the Commonwealth after the Approval Date and (ii) the time permitted to the City for paying any Shortfall shall be extended by the period of time the City has been delayed by the Commonwealth in its efforts to collect Infrastructure Assessments due to a failure by the Commonwealth to meet its obligations with respect to the calculation of Shortfalls.

#### **Section 4.04 Priority of City Lien.**

(a) Except as otherwise provided herein, the Infrastructure Assessments levied by the City in accordance with this Article 4 shall be collected and secured in the same manner as property taxes, betterments, and other special assessments owed to the City and shall be subject to the same penalties and to the same lien priority and sale procedures in case of delinquency as is provided in the General Laws for such property taxes, betterments, and special assessments. Liens imposed by the City for the payment of property taxes under Chapter 59 of

the General Laws shall have priority in payment over any lien securing payment of any Infrastructure Assessment hereunder. The City may avail itself of such provisions of the General Laws relative to the assessment, apportionment, division, fixing, reassessment, revision, and collection of betterments and other special assessments by cities and towns, and the establishment of liens therefor and interest thereon, as the Treasurer and the Assessor shall deem necessary and appropriate for purposes of the assessment and collection of Infrastructure Assessments.

(b) Infrastructure Assessments levied by the City in accordance with this Article 4 shall be subject to any rules, regulations, or guidelines promulgated by the Secretary and the Commissioner pursuant to the Act, but shall not otherwise be subject to supervision or regulation by any department, division, commission, board, bureau or agency of the Commonwealth and shall not be subject to the provisions of Sections 20A and 21C of chapter 59 of the General Laws.

**Section 4.05 Prepayment of Debt Service.** Any Parcel Owner may be released from its obligation hereunder to pay any Infrastructure Assessments for Debt Service allocable to the Project Component owned by such Parcel Owner by paying to the Commonwealth an amount (determined by the Agency) equal to (i) an amount sufficient, together with investment earnings, if any, thereon, to redeem the principal amount of Bonds allocable to such Project Component on the next applicable redemption date thereof, plus all interest and premium, if any, payable upon redemption of such Bonds, less (ii) an amount equal to the Surplus New State Tax Revenues allocable to such Project Component on the date of such payment to the Commonwealth. Payment shall be mandatory in the case of a sale or lease of a Project Component to a non-taxable, nonprofit or governmental entity that does not enter into a binding agreement with the City to pay future Infrastructure Assessments allocable to the Project Component. Following any optional or mandatory prepayment, the City shall also be released from its obligation to pay Local Infrastructure Development Assistance with respect to such Bonds and the New State Tax Revenues thereafter allocable to such Project Component shall be treated as Surplus New State Tax Revenues.

**Section 4.06 Municipal Liquidity Reserve.**

(a) For as long as the City shall be obligated to provide Local Infrastructure Development Assistance for any Bonds, the City shall maintain a Municipal Liquidity Reserve as required by Section 8 of the Act, which shall be funded in accordance with Section 7(c) of the Act and Section 51.12 of the Regulations. The Municipal Liquidity Reserve shall be established at the time of issuance of the Initial Bonds and held by the City as a segregated fund of the City for the benefit of the Commonwealth and shall be funded by the Developer or Parcel Owner(s) in whole or in part in cash or by one or more irrevocable, direct pay letters of credit paid for by Developer or a Parcel Owner and issued by a bank or other financial institution having a rating of not less than AA by at least two nationally recognized rating agencies. Letters of credit provided by a Developer or Parcel Owner shall name the Developer or Parcel Owner as the account party and the City as the beneficiary. The Municipal Liquidity Reserve may be comprised of multiple liquidity reserves for each Assessment Parcel. The initial aggregate amount of the Municipal Liquidity Reserve shall be equal to twice the maximum annual Debt Service payable in any Fiscal Year on the Initial Bonds and, in the instance where multiple

liquidity reserves are established, shall be in an amount equal to the twice maximum annual Debt Service allocable to each Project Component. Upon issuance of any Additional Bonds, the Municipal Liquidity Reserve shall be increased, or one or more additional Municipal Liquidity Reserves shall be established, such that the aggregate amount of such Municipal Liquidity Reserve or Reserves shall be equal to twice the maximum annual Debt Service payable in any Fiscal Year on the Bonds then outstanding. At its option, Developer or a Parcel Owner may provide a letter of credit securing multiple Municipal Liquidity Reserves or separate letters of credit, each securing a different Municipal Liquidity Reserve.

(b) To the extent a Municipal Liquidity Reserve shall have been funded in whole or in part with a letter of credit as provided in Paragraph (a) of this Section 4.06, the Developer or any Parcel Owner may deposit, in substitution for such letter of credit, cash or one or more other letters of credit meeting the requirements set forth in Section 4.06(a). Upon receipt of such cash or substitute letter of credit, the letter of credit previously provided by such party shall be promptly returned by the City to the account party named therein. The obligation to fund the Municipal Liquidity Reserve, in whatever form, shall run with the Assessment Parcel. Upon the transfer of any Assessment Parcel, the transferee may (i) provide the City with a substitute letter of credit meeting the requirements set forth in Section 4.06 (a) to secure the applicable Municipal Liquidity Reserve, which letter of credit shall be in the same stated amount as the letter of credit then being held by the City to secure such Municipal Liquidity Reserve; or (ii) deposit cash with the City to serve as the Municipal Liquidity Reserve; or (iii) provide a combination of both. Upon receipt of such cash and/or substitute letter of credit, the City shall promptly return any letter of credit securing the transferring Parcel Owner's Municipal Liquidity Reserve to the account party named therein and shall distribute to the transferring Parcel Owner any cash remaining in such Municipal Liquidity Reserve.

(c) In the event a letter of credit held for the account of a Municipal Liquidity Reserve shall expire in accordance with its terms prior to the termination of the City's obligation to provide Local Infrastructure Development Assistance, not less than thirty (30) days prior to the expiration date of such letter of credit the Parcel Owner shall deposit with the City an extension of such letter of credit or a substitute letter of credit or cash, or any combination of the foregoing, in an amount equal to the stated amount of the expiring letter of credit; otherwise, the City shall draw the full amount of such letter of credit, or the remaining balance if the City has previously drawn on such letter of credit, and deposit the amount drawn in the applicable Municipal Liquidity Reserve.

(d) In the event of a draw on a letter of credit securing a Municipal Liquidity Reserve, such letter of credit shall be reduced by the amount of such draw, and the Developer or the Parcel Owner(s) shall be under no obligation to increase the amount of such letter of credit or restore or replenish the Municipal Liquidity Reserve for the amount of such draw. In the event that the full amount of the letter of credit is drawn, the letter of credit shall be deemed cancelled and neither the Developer nor the Parcel Owner(s) shall have any further obligation to fund or secure such Municipal Liquidity Reserve.

(e) The City shall provide the Developer and the Parcel Owner(s) written notice of any draw on a letter of credit on the same day as the draw is made.

(f) When the City's obligation to provide Local Infrastructure Development Assistance with respect to the Assessment Parcel has terminated as provided in Section 4.02(e) or Section 4.05 hereof, the City shall within ten (10) business days thereafter return any letter of credit securing the Municipal Liquidity Reserve for such Assessment Parcel to the account party named therein and shall distribute any money remaining in such Municipal Liquidity Reserve to the Developer or the Parcel Owner of the applicable Assessment Parcel, less any unreimbursed third party costs incurred by the City in the levy, collection and enforcement of Infrastructure Assessments with respect to such Assessment Parcel.



## ARTICLE 5

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### **Section 5.01 Representations, Covenants, and Warranties of the Commonwealth.**

The Commonwealth represents, covenants, and warrants, solely on behalf of itself and not on behalf of any other party hereto, for the benefit of the other parties to this Agreement, that it has taken all necessary action and has complied with all provisions of the Constitution of the Commonwealth and the Acts required to make this Agreement the valid obligation of the Commonwealth which it purports to be; and, when executed and delivered by the parties hereto, this Agreement will constitute a valid and binding agreement of the Commonwealth enforceable in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

#### **Section 5.02 Representations, Covenants, and Warranties of the City and the Agency.**

Each of the City and the Agency, as applicable, represents, covenants, and warrants, solely on behalf of itself and not on behalf of any other party hereto, for the benefit of the other parties to this Agreement, that (i) it is a body politic and corporate and political subdivision or public instrumentality of the Commonwealth, as applicable, established under the laws of the Commonwealth, with the power under and pursuant to the Act to execute and deliver this Agreement and to perform its obligations hereunder; and (ii) it has taken all necessary action and has complied with all provisions of the Act and other applicable laws of the Commonwealth required to make this Agreement the valid obligation of the City or the Agency, as applicable, which it purports to be; and, when executed and delivered by the parties hereto, this Agreement will constitute a valid and binding agreement of the City or the Agency, as applicable, enforceable in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

#### **Section 5.03 Representations, Covenants, and Warranties of the Developer and the Owners.**

Each of the Developer and the Owner represents, covenants, and warrants, solely on behalf of itself and not on behalf of any other party hereto, for the benefit of the other parties to this Agreement, as follows:

(a) Each of the Developer and the Owner is duly organized and validly existing under the laws of the state in which it was organized, is in compliance with all applicable laws of such state, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as contemplated by this Agreement.

(b) Each of the Developer and the Owner has full legal right, power, and authority to enter into this Agreement, carry out its obligations hereunder, and carry out and consummate all transactions contemplated by this Agreement, and, to the best of their respective knowledge, has complied with the applicable provisions of the laws of the Commonwealth in all matters relating to such transactions.

(c) By proper action, each of the Developer and the Owner has duly authorized the execution, delivery, and due performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of the Developer and the Owner, respectively, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or other laws affecting creditors' remedies generally or the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

(d) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated by each of the Developer and the Owner will not violate any provision of law, any order of any court or other agency of government, or any indenture, material agreement, or other instrument to which each of the Developer and the Owner is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of, or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement, or other instrument, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the respective properties or assets of the Developer and the Owner.

(e) There are no pending or, to the best of the knowledge of each of the Developer and the Owner, threatened actions, suits, or proceedings before any court, arbitrator or governmental or administrative body or agency which may materially adversely affect the properties, business or condition, financial or otherwise, of the Developer and the Owner.

**Section 5.04 Tax Certificates.** If any series of the Bonds is issued by the Agency with terms intended to qualify the interest thereon for exclusion from gross income of the holders thereof for federal income tax purposes (in this Section 5.04 referred to as "Tax Exempt Bonds"), the Commonwealth, the City, the Developer and the Owner covenant and agree to comply with the following provisions:

(i) The Commonwealth, the City, the Developer and the Owner acknowledge that the Agency expects to deliver on the date of issuance of the Tax Exempt Bonds a certificate (such certificate, as it may be amended and supplemented from time to time, being referred to herein as the "Agency Tax Certificate") containing covenants and agreements designed to satisfy the requirements of Sections 103 and 141 through 150 [*These section references should be narrowed to reference only the Code sections applicable to the bonds to be issued*], inclusive, of the Internal Revenue Code of 1986, as amended, and income tax regulations issued thereunder, and that states the Agency's reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of such Tax Exempt Bonds or of any monies, securities or other obligations on deposit to the credit of any of the funds and accounts created by the Indenture or otherwise that may be deemed to be proceeds of such Tax Exempt Bonds within the meaning of Section 148 of the Code (collectively, the "Proceeds"). At or prior to the date of issuance of the Tax Exempt Bonds, the Commonwealth, the City, the Developer and the Parcel Owner, upon the request of the Agency, each agree to execute and deliver to the Agency a tax certificate in form and substance satisfactory to the Agency containing such covenants and agreements regarding the use of such Proceeds, and setting forth such facts and estimates, as the Agency reasonably considers necessary to enable it to execute and deliver the Agency Tax Certificate. Such facts and estimates will be based on its reasonable

expectations on the date of issuance of such Tax Exempt Bonds and will be, to the best of the knowledge of the officers of the Commonwealth, the City, the Developer and the Parcel Owner executing such tax certificates, true, correct and complete as of that date. The Commonwealth, the City, the Developer and the Owner further agree to make reasonable inquiries to ensure such truth, correctness and completeness.

(ii) The Commonwealth, the City, the Developer and the Owner will not make any use or investment of the proceeds of the Tax Exempt Bonds (including but not limited to, the use of any Public Infrastructure Improvements funded thereby) that would cause any of the covenants and agreements contained in the tax certificate executed and delivered by such party to be violated or that would otherwise have an adverse effect on the exclusion of interest payable on such Tax Exempt Bonds from gross income for federal income tax purposes.

(iii) The Commonwealth, the City, the Developer and the Owner acknowledge that in the event of an examination, inquiry or related action by the Internal Revenue Service with respect to the Tax Exempt Bonds or the exclusion of interest thereon from the gross income of the holders thereof for federal income tax purposes, the Agency may be treated as the responsible party, and the Commonwealth, the City, the Developer and the Owner agree to respond promptly and thoroughly to the satisfaction of the Agency to such examination, inquiry or related action on behalf of and at the direction of the Agency.

#### **Section 5.05 Indemnification.**

(a) Each of the Developer and the Owner, regardless of any agreement to maintain insurance, will indemnify the Commonwealth, the City and the Agency, and their respective officers, directors, employees and agents against (a) any and all claims by any person (other than an indemnified party) related to the participation of Commonwealth, the City and the Agency in the transactions contemplated by this Agreement, including without limitation claims arising out of (i) the Developer's or a Parcel Owner's nonpayment under any contract between the Developer or a Parcel Owner and its consultants, engineers, advisors, contractors, subcontractors and suppliers, or any claims of persons employed by the Developer, a Parcel Owner or its agents to construct the Public Infrastructure Improvements; (ii) any accident, injury or damage to any person occurring in or about or as a result of any Public Infrastructure Improvements during the construction thereof; and (iii) any breach by the Developer or a Parcel Owner of their respective obligations under this Agreement, provided that no indemnification by the Developer or a Parcel Owner is provided hereunder for claims arising from the negligence or willful misconduct of any indemnified party; and (b) all actual out-of-pocket costs, counsel fees, expenses or liabilities reasonably incurred in connection with any such claim or any action or proceeding brought thereon, provided that in no event shall this indemnity extend to special, consequential or punitive damages. In case any action or proceeding is brought against the Commonwealth, the City or the Agency, as the case may be, by reason of any such claim, the Developer or the applicable Parcel Owner will defend the same at its expense upon notice from the Commonwealth, the City or the Agency, as the case may be, and the Commonwealth, the City or the Agency, as the case may be, will cooperate with the Developer and such Parcel Owner, at the expense of the Developer or the Parcel Owner, in connection therewith. This indemnification shall survive the termination of this Agreement.

(b) Notwithstanding any contrary provision in this Agreement, the Commonwealth, the City and the Agency shall have the right to take any action not prohibited by law or make any decision not prohibited by law with respect to proceedings for indemnity against the liability of the Commonwealth, the City or the Agency and its officers, directors, employees and agents and for collection or reimbursement of moneys due to it under this Agreement for its own account. The Commonwealth, the City and the Agency may enforce its rights under this Agreement by legal proceedings for the specific performance of any obligation contained herein or for the enforcement of any other legal or equitable remedy, and may recover damages caused by any breach by the Developer or a Parcel Owner of their respective obligations to it under this Agreement, including court costs, reasonable attorney's fees and other actual out-of-pocket costs and expenses incurred in enforcing such obligations.

**Section 5.06 Further Assurances.** Each of the parties to this Agreement covenants and agrees to adopt, deliver, execute, and make any and all further assurances, instruments, and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the other parties hereto of the respective rights and benefits provided to each of them herein.

## ARTICLE 6

### TERMINATION

**Section 6.01 Termination Upon Satisfaction of Assessment Obligation or Full Repayment of Bonds.** This Agreement shall terminate and expire, and be of no further force and effect, upon the earlier to occur of (i) all obligations of the Developer and any Parcel Owner for payment of any Infrastructure Assessments with respect to any Bonds and all obligations of the City for the payment of any Local Infrastructure Development Assistance with respect to such Bonds shall have been fully satisfied and discharged in accordance herewith and the Act and (ii) full repayment of the principal, interest and premium, if any, on such Bonds. Notwithstanding such termination, the obligations of the Developer and the Owner set forth in Section 5.05 hereof shall survive such termination.

**Section 6.02 Mutual Consent.** This Agreement may be terminated by the mutual, written consent of the Commonwealth, the Agency, the City, the Developer and the Owners.

**Section 6.03 Commonwealth Election to Terminate.**

(a) The following events (each an "Event of Default") shall constitute grounds for the Commonwealth, at its option, to terminate this Agreement:

(i) The Developer, at any time prior to the completion of the Public Infrastructure Improvements, or a Parcel Owner shall voluntarily file for reorganization or other relief under any federal, Delaware or Commonwealth bankruptcy or insolvency law.

(ii) The Developer at any time prior to the completion of the Public Infrastructure Improvements or, a Parcel Owner have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, or shall suffer an attachment or levy of execution to be made against the

property it owns within the Economic Development District unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) The Developer or a Parcel Owner shall breach any material covenant or default in the performance of any material obligation hereunder and such breach or default is not cured as provided below.

(iv) The Developer or a Parcel Owner shall at any time challenge the validity of any of the Bonds or the levy of any Infrastructure Assessments on any Assessment Parcel, other than on grounds that such levy was not made in accordance with the terms of the Act and this Agreement.

(b) If the Commonwealth proposes to terminate this Agreement, the Commonwealth shall first notify the Developer and the Parcel Owners of the grounds for such termination and allow the Developer and the Parcel Owners a minimum of 30 days to eliminate or mitigate to the satisfaction of the Commonwealth the grounds for such termination. Such period shall be extended so long as the Developer or the Parcel Owners, to the reasonable satisfaction of the Commonwealth, are proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the Commonwealth, the Developer or the Parcel Owner(s) have not eliminated or completely mitigated such grounds to the satisfaction of the Commonwealth, the Commonwealth may then terminate this Agreement by written notice to the Developer and the Parcel Owners; provided, however, that the giving of such notice or the receipt thereof shall not be a condition precedent to such termination. In the event of the termination of this Agreement, the Developer is entitled to reimbursement for work related to any Public Infrastructure Improvements undertaken prior to the termination date of this Agreement solely from the Project Fund under the Indenture according to the terms and conditions set forth in this Agreement.

(c) Notwithstanding the foregoing, so long as any Event of Default has occurred, notice of which has been given by the Commonwealth to the Developer and the Parcel Owners, and such Event of Default has not been cured or otherwise eliminated by the Developer or the Parcel Owners, the Commonwealth may in its discretion cease approving payments for the Costs of Public Infrastructure Improvements under Article 4 hereof, provided that the Developer may receive payment of the Costs of any Public Infrastructure Improvement that was completed at the time of the occurrence of the Event of Default upon submission of a Payment Requisition and compliance with the other applicable requirements of this Agreement.

(d) In the event that this Agreement is terminated by the Commonwealth as a result of the occurrence of an Event of Default by the Developer or the Parcel Owners hereunder, in addition to other remedies available to it, the Commonwealth may apply all amounts then or thereafter on deposit in the Project Fund to redeem Bonds under the Indenture, and the Developer and the Parcel Owners shall have no claim or right to any further payments for the Costs of Public Infrastructure Improvements hereunder, except as otherwise may be provided upon the mutual written consent of the Commonwealth and the Developer.

(e) Notwithstanding anything herein to the contrary, termination of this Agreement by the Commonwealth as provided in this Section 6.03 shall not affect the obligation

of the applicable Parcel Owners to provide Annual Data to the Commissioner, to the extent such obligations remain outstanding as provided herein; or the obligation of the City to pay or provide for Local Infrastructure Development Assistance for any Shortfall attributable to Debt Service that is allocable to a Project Component as provided in Section 4.03 hereof payable on any outstanding Bonds the proceeds of which have been disbursed to the Developer pursuant to the terms hereof, and the Debt Service payable on any outstanding Bonds issued by the Agency to pay Issuer Expenses; or the obligation of the City to levy Infrastructure Assessments in accordance with Article 4 hereof with respect to any such Shortfall; or the obligation of the applicable Parcel Owners to pay such Infrastructure Assessments in accordance with their terms.

(f) After receiving written notice of a mortgage from any Parcel Owner, no notice of a default or an Event of Default to a Parcel Owner shall be effective unless and until a copy of the same is given to the named mortgagee (at the addresses provided for in such written notice). If the Parcel Owner has received a notice of default or an Event of Default under this Agreement and the same is not cured by the Parcel Owner before the expiration of the period provided therefor, such mortgagee may cure any such breach upon giving written notice of their intention to do so within sixty (60) days after such holder receives such notice, and shall thereupon proceed with due diligence to cure such breach. Nothing contained herein shall be deemed to impose any obligation on any such mortgagee to correct or cure any such condition. The curing of any such defaults of the Parcel Owner by mortgagee shall be treated as performance by such Parcel Owner.

**Section 6.04 Court Proceedings.** If an Event of Default occurs hereunder, the Commonwealth may enforce the provisions of this Agreement, and may do so with the City and the Agency, by appropriate legal proceedings for the specific performance of any covenant, obligation or agreement of the Developer or the Parcel Owners contained herein, or for the enforcement of any other appropriate legal or equitable remedy, and may recover damages caused by any material breach by the Developer or the a Parcel Owner, respectively, of the provisions of this Agreement, including (to the extent this Agreement may lawfully and expressly provide) court costs, reasonable attorneys' fees and other actual out-of-pocket costs and expenses reasonably incurred in enforcing the obligations of the Developer or the Parcel Owner, as the case may be, hereunder, but shall in no event include incidental, special, punitive or consequential damages. This Agreement hereby expressly provides for the payment of court costs, reasonable attorneys' fees and other actual out-of-pocket costs and expenses reasonably incurred by the Commonwealth, the City and the Agency in enforcing the obligations of the Developer or the Parcel Owner hereunder.

**Section 6.05 Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes, or other acts of God, war, terrorism, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, material shortages, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

## ARTICLE 7

### MISCELLANEOUS

**Section 7.01 Limited Liability of Parties.** Each of the Commonwealth, the Agency, the City, the Developer, and the Owner agrees that any and all obligations of the Commonwealth, the Agency, the City, the Developer, and the Owner arising out of or related to this Agreement are special and limited obligations of such party and such party's obligations to make any payments hereunder are restricted entirely to the moneys described herein and from no other source. The obligations of the Developer, Owner and each future Parcel Owner (each, a "Developer Party") shall be several and no Developer Party shall be responsible for any action or breach of this Agreement by any other Developer Party. No member of the governing board or body of the Commonwealth, the Agency, the City, the Developer or a Parcel Owner, or any staff member, employee, agent, general partner, limited partner, member, manager, officer, director, shareholder or agent of any party, shall incur any liability hereunder to any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 7.02 Responsibility of the Governmental Parties.** In performing its obligations under this Agreement, the Commonwealth, the City and the Agency (collectively, the "Governmental Parties") and their officers, directors, employees and agents shall be entitled to the advice of counsel (who may be counsel for any party) and shall not be liable for any action taken or omitted to be taken in good faith in reliance on such advice. They may rely conclusively on any communication or other document furnished to them under this Agreement and reasonably believed by them to be genuine. No such person shall be liable for any action (i) taken by it in good faith and reasonably believed by it to be within the discretion or powers conferred upon it, or (ii) in good faith omitted to be taken by it because reasonably believed to be beyond the discretion or powers conferred upon it, (iii) taken by it pursuant to any direction or instruction by which it is governed under this Agreement or (iv) omitted to be taken by it by reason of the lack of direction or instruction required for such action, nor shall it be responsible for the consequences of any error of judgment reasonably made by it. The Governmental Parties shall in no event be liable for the application or misapplication of funds, or for other acts or defaults by any person except its own officers, directors and employees. When any consent or other action by a Governmental Party is called for by this Agreement, it may defer such action pending such investigation or inquiry or receipt of such evidence, if any, as it may require in support thereof. No permissive right or power to act shall be construed as a requirement to act; and no delay in the exercise of any such right or power shall affect the subsequent exercise of that right or power.

**Section 7.03 Audit.** The Commonwealth, the City, and/or the designees of each shall have the right, during normal business hours and upon the giving of prior written notice to the Developer or a Parcel Owner, to review all books and records of the Developer or a Parcel Owner pertaining to Costs incurred by the Developer with respect to any of the Public Infrastructure Improvements which have been paid or reimbursed from the proceeds of the Bonds.

**Section 7.04 Actions by Commonwealth or City.** Except as otherwise expressly provided herein, whenever any provision of this Agreement requires or permits any action to be

taken or notice or consent to be given by the Commonwealth or the City, such action, notice or consent shall be deemed sufficiently taken or given for all purposes of this Agreement if taken or given for the Commonwealth by the Secretary and for the City by the Treasurer.

**Section 7.05 Notices.** Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to one or more of the parties to this Agreement shall be given or delivered to all of the parties to this Agreement. A notice shall be deemed to have been received on the same day when personally delivered, or transmitted by electronic mail or facsimile transmission with evidence of transmission; one (1) business day after deposit with FedEx or U.S. Express Mail or other nationally recognized overnight courier with a one-day service and tracking receipt, or three (3) business days following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed to the parties to this Agreement, and their designees, as applicable, as follows:

Commonwealth: Commonwealth of Massachusetts  
Secretary of Administration and Finance  
State House, Room 373  
Boston, MA 02133  
Attention: Jay Gonzalez, Secretary of Administration and Finance  
with copies to:

Edwards Angell Palmer & Dodge LLP  
111 Huntington Avenue at Prudential Center  
Boston, MA 02199  
Attention of: Kris A. Moussette, Esq.

City: CITY OF NEWTON  
Attention:  
[address]  
with copies to:

CITY OF NEWTON

Attention:

Agency: Massachusetts Development Finance Agency  
160 Federal Street  
Boston, MA 02110  
Attention: Senior Vice President, Investment Banking, with a  
copy to Deputy General Counsel

Developer: CHS INFRASTRUCTURE DEVELOPER LLC  
One Wells Avenue



Newton, MA 02459  
Attention: Douglass E. Karp

Owners: CHS COMMERCIAL OWNER LLC  
One Wells Avenue  
Newton, MA 02459  
Attention: Douglass E. Karp

With additional required copies to Developer's and Owner's  
counsel:

Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110  
Attention of: John E. Twohig, Esq.

Each party to this Agreement may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other parties.

**Section 7.06 Severability.** If any non-material part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

**Section 7.07 Successors and Assigns.**

(a) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the extent provided herein.

(b) Except as provided in this subsection, this Agreement may not be assigned in whole or in part by the Developer without the prior written consent of the Commonwealth and the City, which consent shall not be unreasonably withheld or delayed. Any such assignment shall be in writing, shall clearly identify the scope of the rights or obligations assigned, and the rights and obligations, if any, retained by the assignor, and shall not be effective until approved (if required) in writing by the Commonwealth and the City. Notwithstanding the foregoing, such consent shall not be required with respect to any assignment by the Developer to an entity controlling, controlled by or under common control with the Developer, or the Developer's successor by merger or acquisition of all or substantially all of the assets of the Developer.

(c) Except as provided in this subsection, this Agreement may not be assigned in whole or in part by a Parcel Owner (other than to a mortgagee) without the prior written consent of the Commonwealth and the City, which consent shall not be unreasonably withheld or delayed. Any such assignment shall be in writing, shall clearly identify the scope of the rights or obligations assigned, and the rights and obligations, if any, retained by the assignor, and shall not be effective until approved (if required) in writing by the Commonwealth and the City. Notwithstanding the foregoing, such consent shall not be required (i) with respect to any assignment by a Parcel Owner to an entity controlling, controlled by or under common control with the Parcel Owner, or the Parcel Owner's successor by merger or acquisition of all or

substantially all of the assets of the Parcel Owner or (ii) in connection with a sale or transfer of an Assessment Parcel, if simultaneously therewith the buyer or transferee of such Assessment Parcel has complied with its obligations under Section 4.06(b) hereof with respect to any then-applicable Municipal Liquidity Reserve and assumes in writing all of the Parcel Owner's other obligations hereunder.

(d) Notwithstanding anything in this Agreement to the contrary, the Assessment Parcel may be further divided and/or made subject to a condominium declaration to create a new or further Assessment Parcel(s) without the consent of the Commonwealth or the City, provided the Developer provides notice of the same to the Commonwealth and City and provides an Allocation Notice setting forth the method of allocation of Debt Service, Shortfall and other obligations of the Parcel Owners hereunder amongst the newly created Assessment Parcels. Any successor to an Assessment Parcel shall be liable only for the allocable portion of Parcel Owners' responsibilities hereunder as set forth in the Allocation Notice and in accordance with the conditions and limitations set forth in Section 7.01 hereof. Nothing herein shall be deemed to prohibit or restrict the conveyance, leasing or other transfer of any Assessment Parcel provided only that the transferee assumes the allocable portion of the Parcel Owners' responsibilities hereunder in accordance with the provisions of this Agreement. In the event the Assessment Parcel is made subject to a condominium declaration, the condominium trustees, collectively, may be designated, pursuant to an Allocation Notice, as the exclusive representative of some or all of the Parcel Owners, with authority to conclusively exercise the rights of the applicable Parcel Owners under this Agreement, including, without limitation, the right to issue, modify or revoke Allocation Notices.

**Section 7.08 Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by any other party, or the failure by a party to exercise its rights upon the default of any other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by such other party with the terms of this Agreement thereafter.

**Section 7.09 Merger.** No other agreement, statement, or promise made by any party or any employee, officer, or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Agreement shall be binding.

**Section 7.10 Parties in Interest.** Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Commonwealth, the Agency, the City, the Developer, and the Owner any rights, remedies, or claims under or by reason of this Agreement or any covenants, conditions, or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the Commonwealth, the Agency, the City, the Developer, or the Owner shall be for the sole and exclusive benefit of the Commonwealth, the Agency, the City, the Developer, and the Owner.

**Section 7.11 Amendment.** This Agreement may be amended, in a manner consistent with the Act, by written amendment or supplement hereto executed by the Commonwealth, the Agency, the City, the Developer, and the Owner.

**Section 7.12 Article and Section Headings, Gender, and References.** The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to "Articles," "Sections," and other subdivisions or clauses are to the corresponding articles, sections, subdivisions, or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision, or clause hereof.

**Section 7.13 Effective Date.** This Agreement shall become effective as of the date first written above.

**Section 7.14 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 7.15 Governing Law.** The provisions of this Agreement shall be governed by the laws of The Commonwealth of Massachusetts applicable to contracts made and performed in the Commonwealth, and the parties hereto agree that Massachusetts courts shall have sole jurisdiction over any actions at law or in equity arising out of this Agreement.

**Section 7.16 Limited Undertaking.** Nothing in this Agreement shall be construed as an undertaking by the Developer or any Project Owner to construct or complete the Project or any Project Component or phase of the Project, or any specific design, programming or mix of uses. All obligations and agreements of the Developer and the Project Owners under this Agreement are subject to the issuance of all necessary public and private licenses, easement rights and approvals.

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first-above written.

THE COMMONWEALTH OF  
MASSACHUSETTS

By: \_\_\_\_\_  
Secretary of the Executive Office for  
Administration and Finance

CITY OF NEWTON

By: \_\_\_\_\_  
Setti Warren, Mayor

MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY

By: \_\_\_\_\_  
Its:

CHS INFRASTRUCTURE DEVELOPER LLC  
By: NED MANAGER LLC

By: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Its: Manager

CHS COMMERCIAL OWNER LLC  
By: NED MANAGER LLC

By: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Its: Manager

**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT A**

**CERTIFIED ECONOMIC DEVELOPMENT PROPOSAL**

**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT B-1**

**ELIGIBLE COSTS OF INITIAL PUBLIC INFRASTRUCTURE IMPROVEMENTS**

All Costs associated with the provision of the “Public Realm” elements, as more particularly described in the \_\_\_\_\_, and all street and sidewalk areas within the Economic Development District, including without limitation, the following:

**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT B-2**

**ELIGIBLE COSTS OF ADDITIONAL BOND  
PUBLIC INFRASTRUCTURE IMPROVEMENTS**

All Costs associated with the provision of the “Public Realm” elements, as more particularly described in the \_\_\_\_\_, and all street and sidewalk areas within the Economic Development District, including, without limitation, the following:



**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT C**

**ECONOMIC DEVELOPMENT DISTRICT**

# INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT

## EXHIBIT D

### FORM OF PAYMENT REQUISITION

PAYMENT REQUEST NO. \_\_\_\_\_

[NED/CHESTNUT HILL SQUARE LLC] AND [CHS COMMERCIAL OWNER LLC] (collectively, the "Developer"), by its duly authorized representative, hereby certifies, in connection with this Payment Request (this "Payment Request") under the Infrastructure Development Assistance Agreement dated as of \_\_\_\_\_, 20\_\_ (the "IDAA") among The Commonwealth of Massachusetts, the CITY OF NEWTON, the Massachusetts Development Finance Agency (the "Agency") and the Developer, that:

1. Terms used herein and not otherwise defined herein shall have the meanings given such terms in the IDAA or the Trust Indenture dated as of \_\_\_\_ 1, 201\_\_ (the "Indenture") between the Agency and \_\_\_\_\_, as Trustee.
2. The amount requested to be disbursed by this Payment Request: (a) is a portion of an item or category of the Costs of Public Infrastructure Improvements authorized for funding under the IDAA, and (b) includes only payments for work, materials, equipment and other property that have been incorporated into the Public Infrastructure Improvements, or such materials are located on the project site, suitably stored and secured.
3. The total amount requested to be disbursed pursuant to this Payment Request is \$\_\_\_\_\_. Such amount is to be paid directly to the Developer.
4. The item or category of the Costs of Public Infrastructure Improvements for which funding is being requested by this Payment Request and a cumulative summary of payments by category or item to date by reference to the categories or itemization are set forth in Schedule I attached hereto. The amounts set forth herein and in Schedule I attached hereto are supported by the attached copies of invoices or statements.
5. The Developer is not in default beyond any applicable notice and cure period under (a) the IDAA or (b) any Construction Contract pertaining to the Public Infrastructure Improvements for which the Developer is seeking payment of Costs with this Payment Request.
6. All payments previously received have been applied in the manner and for the purposes set forth in the applicable requisition for such funds.
7. All conditions required to be satisfied pursuant to the Indenture in connection with this Payment Request have been satisfied.

IN WITNESS WHEREOF, this Payment Request has been duly executed by the Developer by its duly authorized representative this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CHS INFRASTRUCTURE DEVELOPER LLC]

By: [NED MANAGER LLC]

By: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Its: Manager

[CHS COMMERCIAL OWNER LLC]

By: [NED MANAGER LLC]

By: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Its: Manager

SCHEDULE I TO PAYMENT REQUEST

**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT E**

**CERTIFICATE AND APPROVAL OF INDEPENDENT CONSTRUCTION AGENT**

I, \_\_\_\_\_, hereby certify that I hold the position designated beneath my signature and that I have all authority necessary to execute this certificate on behalf of \_\_\_\_\_, as Independent Construction Agent under the Infrastructure Development Assistance Agreement dated as of \_\_\_\_\_, 20\_\_ (the "IDAA") among The Commonwealth of Massachusetts, the CITY OF NEWTON, the Massachusetts Development Finance Agency (the "Agency") and [NED/CHESTNUT HILL SQUARE, LLC] (the "Developer"), and I hereby certify for and on behalf of the Independent Construction Agent:

Terms used herein and not otherwise defined herein shall have the meaning given such terms in the IDAA.

1. I have conducted a site visit on \_\_\_\_\_, 20\_\_ to ascertain the portion of the work completed on the Public Infrastructure Improvements identified in Payment Request No. \_\_\_\_, and such site visit, together with a review of the Payment Request and such supporting materials as we deem appropriate to make the certifications herein set forth, is the basis as to the certifications set forth herein.

2. The portion of the work with respect to the Public Infrastructure Improvements identified in the foregoing Payment Request No. \_\_\_\_ has been completed.

3. The costs of the Public Infrastructure Improvement being requested for payment are the Costs of such work specified in such Payment Request.

4. Payment Request No. \_\_\_\_ is hereby approved.

IN WITNESS WHEREOF, I have executed this Certificate and Approval of Independent Construction Agent on behalf of the Independent Construction Agent this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:

**EXHIBIT F**  
**ASSESSMENT PARCEL**

[note: legal description should exclude ground lease parcel]

CHESTNUT HILL SQUARE

Boylston Street □ Newton, MA

**NewEngland**  
DEVELOPMENT  
One Wells Avenue Newton, Massachusetts

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Infrastructure Investment  
Incentive Program (“I-Cubed”)

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I-Cubed Background

- Public Infrastructure Funding Mechanism
  - Infrastructure bond program established by the Commonwealth to fund streets, sidewalks, water and wastewater systems, drainage systems, parks, and transportation improvements
  - State issues bonds and the bond proceeds fund public infrastructure that will generate economic development
  - Project enabled by the public infrastructure investment generates new state tax revenues to pay debt service on the bonds
  - Project sales and income tax revenues must exceed the projected debt service on the bonds by a factor of at least 1.5

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### I-Cubed Process

- > Economic Development Proposal ("EDP")
  - > Informal consultation between Developer and the Executive Office of Administration and Finance
  - > Preliminary EDP submitted to the State for peer review and comment (coordination with municipality)
  - > Preliminary approval by Secretary with comments
  - > Revised EDP submitted to municipality for review, hearing and approval by legislative body
  - > Final EDP submitted by the municipality and the developer to the Secretary for approval
  - > Negotiation and Execution of Infrastructure Development Assistance Agreement
  - > Bond Issuance

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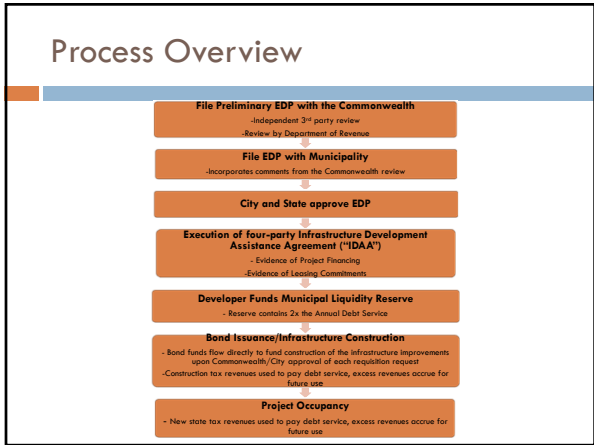
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### Proposed Project

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### Proposed Development Program

Use	Size (in Gross Leasable Area)
Retail/Restaurant	85,000 SF
Grocery	47,000 SF
Health Club	28,000 SF
Medical Office	58,000 SF
<b>Total</b>	<b>218,000 SF</b>
Residential	Up to 100 Units

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## Chestnut Hill Square Qualifications

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### I-Cubed Regulatory Compliance

- > This Project is financially feasible, backed by New England Development, which has extensive experience in this type of development and who has a long-standing and proven track record of investing in infrastructure and communities;
- > The Project is consistent with Commonwealth's Sustainable Development Principles by redeveloping a previously existing, degraded site;
- > Project seeks to resolve previously identified, high-priority regional infrastructure issues for the Commonwealth, along Route 9 corridor;
- > The entire Project is anticipated to create approximately 500 short-term construction and over 525 long-term permanent jobs at a variety of wage and skill levels;
- > Project brings a significant amount of net new revenue to the Commonwealth in the form of income and sales tax receipts, totaling over \$2,100,000 on a recurring, annual basis (excluding approximately \$545,000 in sales tax revenue for MBTA and education); and
- > Annual Net New State Tax Revenues are anticipated to exceed by at least 1.5 times the projected debt service on the bonds.

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What will the I-Cubed funds be used for?

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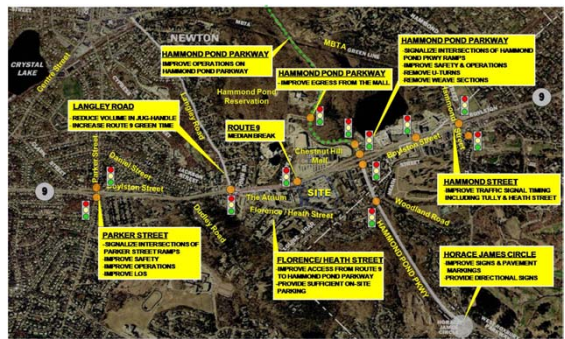
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### Planned Traffic Improvements




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### Transportation Benefits

- > Implementation of high-priority regional transportation improvements
- > Route 9 travel time reductions
- > Dramatically improve Langley Road Jug-handle operations
- > Improve egress from The Mall at Chestnut Hill
- > Reduce cut-through traffic on Hammond St. and Florence St. by decreasing travel times along Route 9 and Hammond Pond Parkway
- > Pedestrian improvements along Route 9 and Hammond Pond Parkway
- > Safety improvements at the Parker Street and Hammond Pond Parkway interchanges and at Horace James Circle

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### Application Review and Program Implementation

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### Municipality Safeguards

- > Thorough application review/pre-approval process by the Commonwealth
  - > Independent peer review
  - > Department of Revenue must approve revenue projections
- > Execution of Infrastructure Development Assistance Agreement prior to bond issuance
- > Compliance with IDAA will be required by the Project lender
- > Evidence of financing and leasing commitments required prior to bond issuance
- > Developer establishes a "Municipal Liquidity Reserve" fund as a protection for unlikely revenue shortfall
  - > Developer required to replenish funds drawn from the liquidity reserve
- > Bond funds flow directly to fund construction of the infrastructure improvements upon approval of each requisition request by Commonwealth and City
- > Debt service is paid with new state tax revenues
- > Tax revenues in excess of debt service payments accrue for future use
- > City has the right to lien and assess property in the unlikely event the debt service is not paid
- > In the unlikely event a lien is placed on the property, it will take priority over other security interests

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**INFRASTRUCTURE DEVELOPMENT ASSISTANCE AGREEMENT**

**EXHIBIT G**

**DISPLACEMENT FACTORS**

The Finance Committee of the Board of Aldermen (the “Board”) recommends that the Board:

(a) approve the Economic Development Proposal (the “Proposal”) as submitted to the City by NED Chestnut Hill LLC (the “Petitioner”) acknowledging all of the City’s financial obligations in connection with the proposal;

(b) approve all actions necessary in connection with the creation of a Municipal Liquidity Reserve;

(c) to authorize the Mayor and the Collector-Treasurer of the City, in the name of and on behalf of the City, to execute, deliver and record such agreements with the Developer, the Commonwealth and the Massachusetts Development Finance Agency as are necessary to implement the Proposal and the transactions contemplated thereby; and

(d) take, approve and/or authorize all other City actions necessary to implement the Proposal as submitted.

#367-10B2

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

November 1, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to amend *Docket #367-10(B2) – \$4,001,625 for renovations to the core of F.A. Day Middle School and sprinkler systems –HELD* by appropriating \$86,545 to cover the final cost of the construction and installation of the four modular classrooms at Horace Mann, Zervas, and Burr Elementary Schools.

I look forward to discussing this very important project with your Honorable Board. Thank you for your consideration of this matter.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Setti D. Warren".

Setti D. Warren  
Mayor

11 NOV -1 P 2:12  
CITY CLERK  
NEWTON, MA. 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE



City of Newton



Setti D. Warren  
Mayor

## PUBLIC BUILDINGS DEPARTMENT

Stephanie Kane Gilman, Commissioner

Telephone (617) 796-1600

FAX (617) 796-1601

TTY: (617) 796-1089

52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

October 31, 2011

The Honorable Setti D. Warren  
Mayor, City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: Additional Funding Request for Four (4) Modular Classrooms for Three Elementary Schools, Docket Item # 367-10(B)

Dear Mayor Warren:

The Public Buildings Department is requesting an additional sum to cover the cost of the Construction and installation of four modular classrooms at three elementary schools. The revised project cost is based upon the bid received, which is an average of \$230,720.00 per classroom. The project is underway and on track to meet the December, 2011 substantial completion date.

The breakdown of the revised project cost is as follows:

Modular Construction and Installation	\$ 922,880.00
5% Contingency	\$ 46,144.00
Modular Design (including reimbursables)	<u>\$ 115,976.00</u>
Sub-Total	\$1,084,920.00
Less Original Schematic Design Funding	- \$ 75,000.00
Less Amended Funding Request (1)	<u>- \$ 923,375.00</u>
Amended Funding Request (2)	\$ 86,545.00

Please do not hesitate to contact me should you have any questions regarding this request.

Sincerely,

Stephanie Kane Gilman  
Commissioner of Public Buildings

SKG:dla

CC: David Fleishman, Superintendent of Schools  
Sandy Guryan, Assistant Superintendent of Business/Finance  
Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer

#367-10B2



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:48  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to amend *Docket #367-10(B2) – \$4,001,625 for renovations to the core of F.A. Day Middle School and sprinkler systems –HELD* by appropriating \$102,117 for the design for sprinklers systems for the Horace Mann, Zervas, and Burr Elementary Schools.

Due to a change in the law, sprinkler systems are now required anytime an addition, including modular classrooms, is made to a building that has a gross building square footage of 7,500 square feet or more.

I look forward to discussing this very important project with your Honorable Board. Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Setti D. Warren".

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

#367-10B2

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

October 11, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

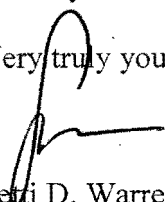
Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to amend *Docket #367-10(B2) – \$4,001,625 for renovations to the core of F.A. Day Middle School and sprinkler systems* –by appropriating \$643,500 for the design and other related expenses associated with the building renovation to FA Day Middle School.

I have attached a breakdown of fees for design work which has been provided by Stephanie Gilman, Commissioner of Public Buildings. As you know, the School Committee will be meeting with the Honorable Board on October 20, 2011 to discuss the Newton Public Schools' Long Range Space Plan in full detail.

Thank you for your consideration of this matter.

Very truly yours,

  
Setti D. Warren,  
Mayor

11 OCT 11 P 4:40  
CITY CLERK  
NEWTON, MA 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



Setti D. Warren  
Mayor  
August 24, 2011

**PUBLIC BUILDINGS DEPARTMENT**

Stephanie Kane Gilman, Commissioner  
Telephone (617) 796-1600  
FAX (617) 796-1601  
TTY: (617) 796-1089  
52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

Honorable Setti D. Warren  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: FA Day Middle School – Building Renovation, Sprinkler Installation & (5) Classroom Addition Design Funding Request

Dear Mayor Warren:

Please consider this request in the amount of \$643,500.00 to cover the cost of Design (from Design Development), and other related expenses associated with the building renovation to FA Day Middle School.

The feasibility study has been completed and now the City and the School Department will be going forward with plans to renovate the building as well as install a fire sprinkler system within the building.

The breakdown of fees is as follows:

Architectural and Consultants	\$ 705,000
Testing	45,000
	\$ 750,000
Contingency (5%)	<u>37,500</u>
Total	\$ 787,500

Less Current Schematic Design - \$ 144,000

Funding Request \$ 643,500

Please do not hesitate to contact me should you have any questions regarding this request.

Sincerely,

Stephanie Kane Gilman,  
Commissioner of Public Buildings

SKG:dia

CC: Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer  
Dr. David Fleishman, School Superintendent  
Sandy Guryan, Deputy Superintendent/Chief Administrative Officer

17 OCT 11 P 5 14  
CITY CLERK  
NEWTON, MA. 02459



## PUBLIC BUILDINGS DEPARTMENT

Stephanie Kane Gilman, Commissioner

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52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren

Mayor

September 12, 2011

The Honorable Setti D. Warren

Mayor

City of Newton

1000 Commonwealth Avenue

Newton Centre, MA 02459

RE: Sprinkler Installation in (4) Modular Classrooms and existing the building at Burr, Horace Mann and Zervas Elementary Schools

Dear Mr. Mayor:

The Public Buildings Department, on behalf of the School Department, is requesting the sum of **\$102,117** to cover the cost of design of Fire Sprinkler Systems in the (4) modular classrooms and existing buildings at three elementary schools; Burr, Horace-Mann and Zervas. As indicated below, the total estimated project cost will be \$1,174,277 based on \$9.43/sq. ft. for design and installation.

Due to a change in the law, these sprinklers are now required anytime an addition is made to a building that has a gross building square footage of 7,500 sq. ft. or more.

The City of Newton has requested a one year waiver, from the Commonwealth of Massachusetts, Automatic Sprinkler Appeals Board, to allow for a delayed installation of these sprinklers. These installations will occur during the summer of 2012, but the design and subsequent bidding will occur beginning this fall.

The breakdown of costs by school is as follows:

	<u>Burr</u>	<u>Horace-Mann</u>	<u>Zervas</u>	<u>Totals</u>
Design	\$ 43,460	\$ 31,160	\$ 27,497	\$ 102,117
Construction	\$434,600	\$311,600	\$ 274,905	\$1,021,105
5% Contingency	<u>\$ 21,730</u>	<u>\$ 15,580</u>	<u>\$ 13,745</u>	<u>\$ 51,055</u>
Total	\$499,790	\$358,340	\$ 316,147	\$1,174,277

Please do not hesitate to contact me should you have any questions regarding this request.

Sincerely,

Stephanie Kane Gilman,  
Commissioner of Public Buildings

CC: Sandy Guryan, Deputy Superintendent/Chief Administrative Officer  
Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer  
Dr. David Fleishman, School Superintendent

8/26/2011

**Revised Cost of Modular Classroom & Sprinkler Installation at (3) Schools**

School	ZERVAS SCHOOL	HORACE MANN SCHOOL	BURR SCHOOL	TOTAL COSTS
Modular Classroom Construction *	\$ 408,750	\$ 204,375	\$ 204,375	
Design	\$ 70,000	\$ 35,000	\$ 35,000	
Contingency (5%)	\$ 20,438	\$ 10,219	\$ 10,219	
Construction Sub Total	\$ 499,188	\$ 249,594	\$ 249,594	\$ 998,375
Sprinkler installation (\$8.20/sq.ft.)	\$ 274,905	\$ 311,600	\$ 434,600	
Design	\$ 27,497	\$ 31,160	\$ 43,460	
Contingency (5%)	\$ 13,745	\$ 15,580	\$ 21,730	
Sprinklers Sub Total	\$ 316,147	\$ 358,340	\$ 499,790	\$ 1,174,277
<b>Total Project Costs</b>	<b>\$ 815,334</b>	<b>\$ 607,934</b>	<b>\$ 749,384</b>	<b>\$ 2,172,652</b>

Current Budget for all Modular Construction \$ 998,375

Projected Budgets for Modulcars & Sprinklers \$ 2,172,652

\*\* Total Additional Funding Required for Project \$ 1,174,277

\*\* Summary of Modular Project Cost Increase

\$ 1,174,277 Modular Classroom Sprinkler Cost

\* Construction Cost includes: general conditions, OH+P, escalation, Design Contingency

#367-10B2

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(617) 796-1100

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E-mail  
swarren@newtonma.gov



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

October 11, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

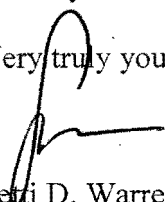
Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to amend *Docket #367-10(B2) – \$4,001,625 for renovations to the core of F.A. Day Middle School and sprinkler systems* –by appropriating \$643,500 for the design and other related expenses associated with the building renovation to FA Day Middle School.

I have attached a breakdown of fees for design work which has been provided by Stephanie Gilman, Commissioner of Public Buildings. As you know, the School Committee will be meeting with the Honorable Board on October 20, 2011 to discuss the Newton Public Schools' Long Range Space Plan in full detail.

Thank you for your consideration of this matter.

Very truly yours,

  
Setti D. Warren,  
Mayor

11 OCT 11 P 4:40  
CITY CLERK  
NEWTON, MA. 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



**PUBLIC BUILDINGS DEPARTMENT**

Stephanie Kane Gilman, Commissioner

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52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren

Mayor

August 24, 2011

Honorable Setti D. Warren  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: FA Day Middle School – Building Renovation, Sprinkler Installation & (5) Classroom Addition Design Funding Request

Dear Mayor Warren:

Please consider this request in the amount of \$643,500.00 to cover the cost of Design (from Design Development), and other related expenses associated with the building renovation to FA Day Middle School.

The feasibility study has been completed and now the City and the School Department will be going forward with plans to renovate the building as well as install a fire sprinkler system within the building.

The breakdown of fees is as follows:

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Less Current Schematic Design - \$ 144,000

Funding Request \$ 643,500

Please do not hesitate to contact me should you have any questions regarding this request.

Sincerely,

Stephanie Kane Gilman,  
Commissioner of Public Buildings

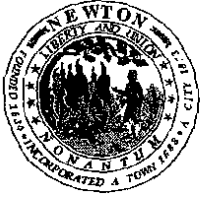
SKG:dia

CC: Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer  
Dr. David Fleishman, School Superintendent  
Sandy Guryan, Deputy Superintendent/Chief Administrative Officer

17 OCT 11 P 5 14  
CITY CLERK  
NEWTON, MA. 02459



City of Newton



## PUBLIC BUILDINGS DEPARTMENT

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52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren

Mayor

28 October, 2011

The Honorable Setti D. Warren

Mayor

City of Newton

1000 Commonwealth Avenue

Newton Centre, MA 02459

RE: FA Day School Renovation Project

SUBJECT: Request for Additional Design Funds – Supplemental Information

Dear Mayor Warren:

In support of the Department's previously submitted request for design funds for the above referenced project enclosed please find the following supplemental information:

- 50% Schematic Design Drawings by HMFH.
- Design Review Committee's recommendation letter of 28 October 2011.

On Thursday, 27 October 2011 the Design Review Committee reviewed plans submitted by HMFH Architects on behalf of the Public Buildings Department and Newton Public Schools for the above referenced project. The Design Review Committee recommended continuation of design of the proposed design scheme and site plan development for submittal to the Committee for Schematic Design review and Site Plan approval.

The anticipated review timeline for the project is as follows:

10/24/2011	School Committee Approves Recommended Design.
10/27/2011	Design Review Committee Recommends Continuation of design for Recommended Option.
11/09/2011	Public Facilities Committee Design Funding Approval.
11/14/2011	Finance Committee Design Funding Approval.
11/17/2011	DRC Site Plan Approval.
11/21/2011	Notice for Site Plan Approval Public Hearing.
12/19/2011	Public Facilities Site Plan Approval Public Hearing.

Please do not hesitate to contact me should you have any questions regarding the request for design funds.

Sincerely,

Stephanie Kane Gilman,  
Commissioner of Public Buildings

SKG: amv

CC: Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer  
Dr. David Fleishman, School Superintendent  
Sandy Guryan, Deputy Superintendent/Chief Administrative Officer

City of Newton



Setti D. Warren  
Mayor

PUBLIC BUILDINGS DEPARTMENT  
Stephanie Kane Gilman, Commissioner  
Telephone (617) 796-1600  
FAX (617) 796-1601  
TTY: (617) 796-1089  
52 Elliot Street  
Newton Highlands, MA 02461-1605

28 October, 2011

The Honorable Setti D. Warren  
Mayor  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: FA Day School Renovation Project

SUBJECT: 50 % Schematic Design Review

Dear Mayor Warren:

On Thursday, 27 October 2011 the Design Review Committee reviewed plans submitted by HMFH Architects on behalf of the Public Buildings Department and Newton Public Schools for the above referenced project.

The proposed design will convert the existing administration offices and student services areas, and add a third floor addition to create six new class rooms and associated learning spaces. Interior modifications are proposed to expand the existing cafeteria to provide additional seating to allow the school to reduce the number of lunch periods from five to three. Additionally the design proposes a two-story addition at the Minot Street entry to accommodate the relocated administration offices and student services, and to provide an appropriate and supervised building entry.

The Design Review Committee's opinion in general is that the overall planning approach, site organization, and design concepts are logical, thoughtful, and well presented. The School Committee confirmed that the proposed design meets the programmatic needs for the school and the projected increase in enrollment.

To ensure the appropriateness and cost effectiveness of the final design solution, the Committee recommends that the design team evaluate the following programmatic, design, operational and technical project components through the continuation of the Schematic Design and Design Development Phases:

- Analyze existing spaces and uses which may be relocated to yield more efficient use of space, provide better supervision of west entry, and potentially reduce size of addition and extent of interior renovations.
- Confirm quantity, size, and dimensions of program spaces for efficient layout and use of space to reduce extent of renovation and new construction.
- Analyze alternative cafeteria seating layouts to reduce extent of interior demolition / renovations and ensure appropriate circulation for student queuing and trash removal.
- Analyze trash removal from cafeteria, and confirm that dumpster count and layout will accommodate increased enrollment, food service and seating.
- Confirm food services areas and kitchen will accommodate increased service and seating.
- Confirm with code consultant the proposed egress configuration for the second floor student services area.
- Confirm extent of modifications required to existing structure to accommodate third floor addition.
- Analyze appropriate and cost effective location for proposed science room fit-out design alternate.
- Review opportunities to provide windows at percussion and choral rooms to offset windows removed to accommodate two-story addition.
- Evaluate feasibility and cost saving potential of eliminating ceilings in conjunction with installation of sprinklers and life safety devices.
- Confirm with NFD dimensional specifications for fire truck turning radii requirements.

The Design Review Committee has also requested the 50% Schematic Design cost budget and anticipated review schedule for the project.

The Design Review Committee recommends continuation of design of the proposed design scheme and site plan development for submittal to the Committee for Schematic Design review and Site Plan approval.

Sincerely,



Stephanie Kane Gilman,  
Commissioner of Public Buildings

SKG: amv

CC: Robert Rooney, Chief Operating Officer  
Maureen Lemieux, Chief Financial Officer  
Dr. David Fleishman, School Superintendent  
Sandy Guryan, Deputy Superintendent/Chief Administrative Officer

# Renovations and Additions to the F.A. Day Middle School Newton, MA

## Newton Public Schools Administration:

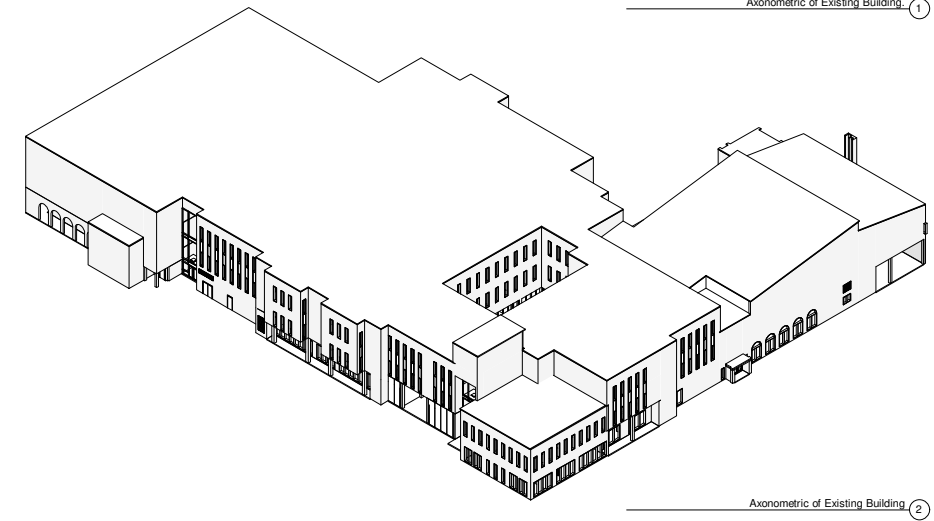
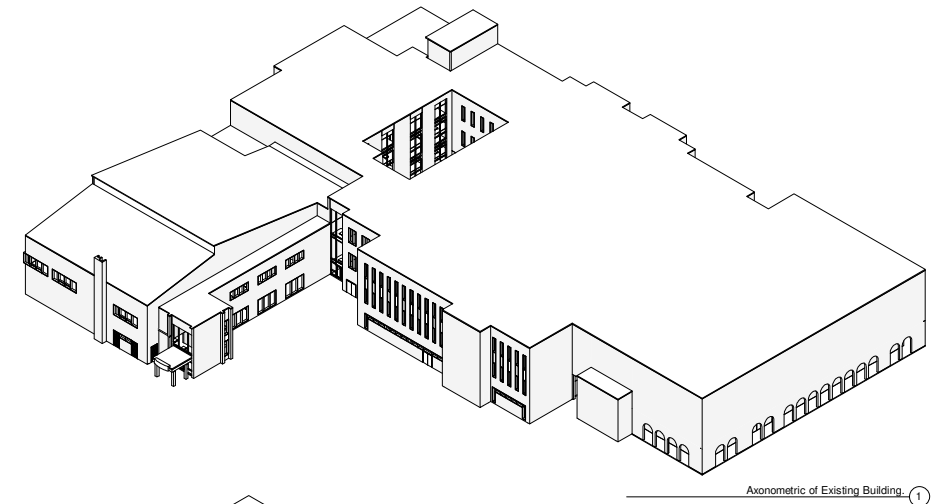
Dr. David A. Fleishman / Superintendent  
Sandra Guryan / Deputy Superintendent, Chief Administrative Officer

## School Building Committee:

Sandra Guryan / Deputy Superintendent, Newton Public Schools  
Michael Cronin / Chief of Operations, Newton Public Schools  
Stephanie Gilman / Building Commissioner, Public Buildings Department  
Alejandro Valcarce / Owner's Project Manager  
Arthur Cabral / Budget & Project Specialist, Public Buildings Department  
Brian Turner / Principal, F.A. Day Middle School

## HMFH Architects, Inc. / Architect

Crosby Schlessinger Smallridge LLC / Landscape Architect  
Nitsch Engineering / Civil Engineering  
Richmond So Engineers, Inc. / Structural Engineers  
TMP Consulting Engineers, Inc. / MEP, FP Engineers  
McPhail Associates, Inc. / Geotechnical & Geoenvironmental Engineers  
Cavanaugh Tocci Associates, Inc. / Acoustical Consultants  
Kalin Associates / Specifications Consultant  
Arc - Spec Consulting, Inc. / Hardware Consultants  
PM & C / Cost Estimator



### DRAWING LIST

- Civil Drawings
  - C1.0 Schematic Site Utility Plan
  - C2.0 Schematic Site Utility Details
- Landscape Drawings
  - L1.0 Site Materials
- Architectural Drawings
  - A0.0 Keynote Master List, Leg. & Abbrev.
  - A0.1 Code Sheet - First Floor
  - A0.2 Code Sheet - Second Floor
  - A0.3 Code Sheet - Third Floor
  - A1.1 Phasing Plan
  - A2.1 CR Layout / West Entry
  - A2.2 Cafeteria Layout
  - A2.3 1st & 2nd Floor Addition
  - A3.1 Existing Ceiling Plan - First Floor
  - A3.2 Existing Ceiling Plan - Second Floor
  - A3.3 Existing Ceiling Plan - Third Floor
  - A5.1 Wall Sections
  - A6.1 Plan Details

SET # \_\_\_\_\_

# 50% SCHEMATIC DESIGN REVIEW SET

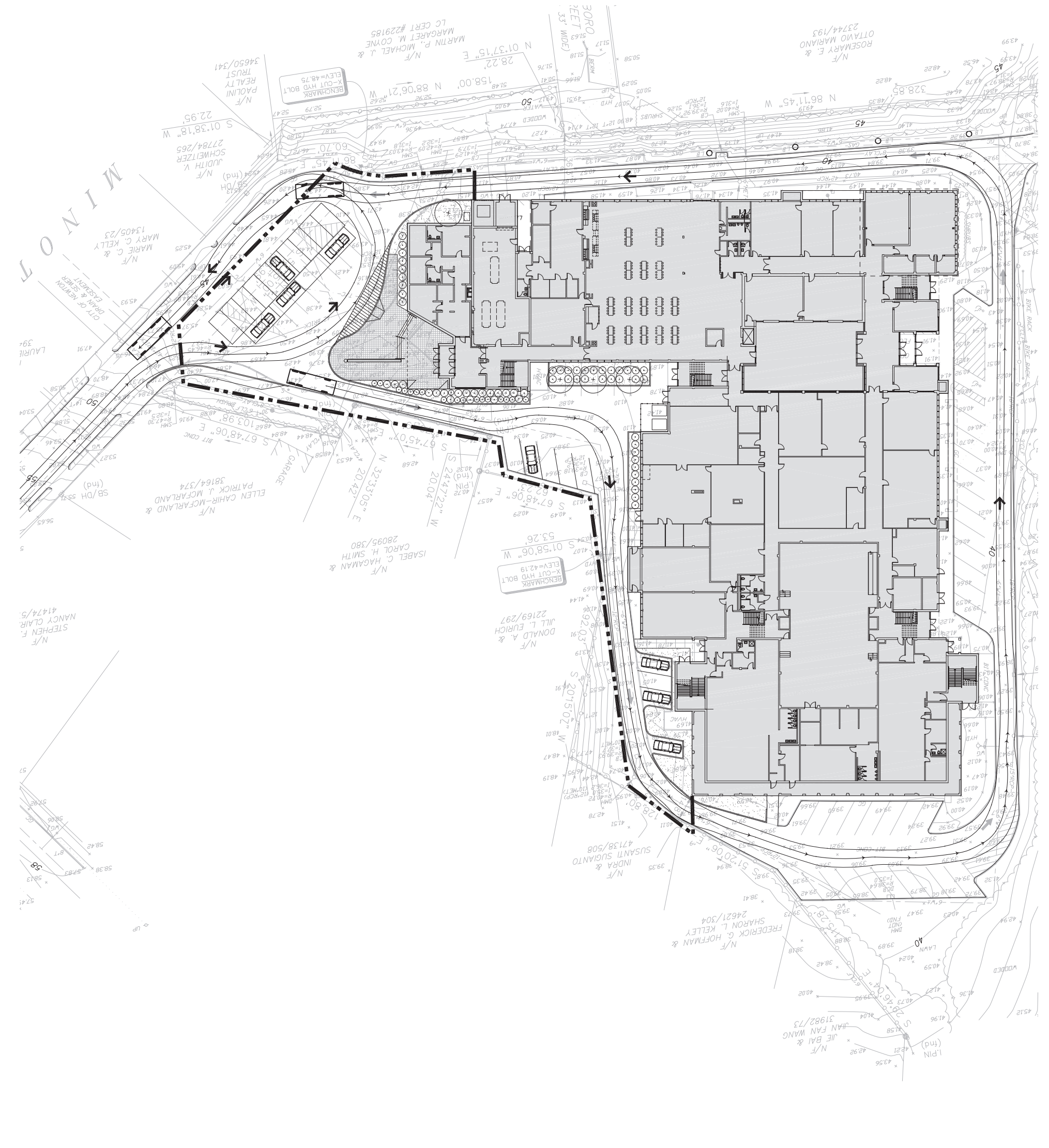
# 10/20/2011





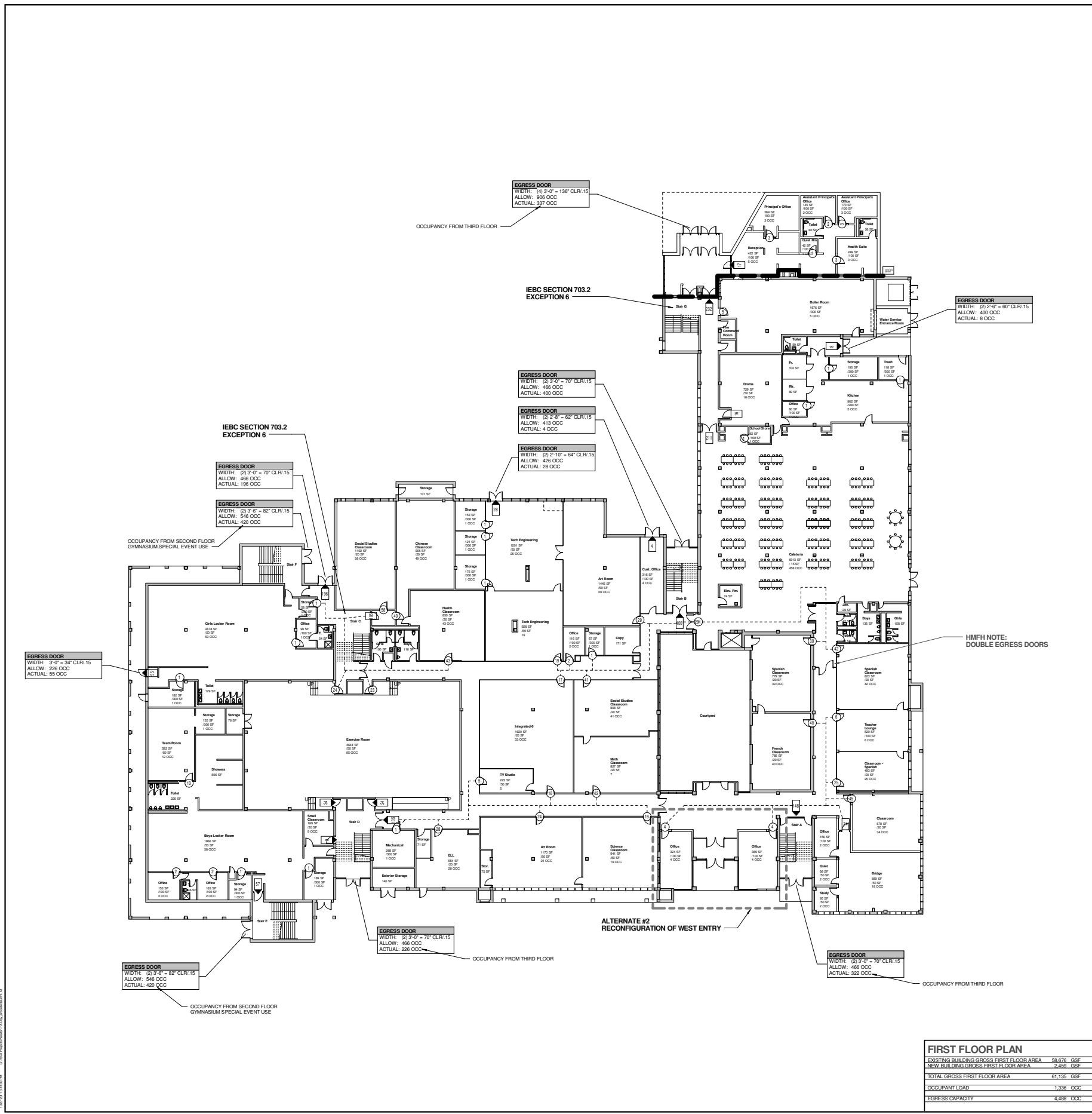
- COST ESTIMATING NOTES:**
- EXISTING BACKGROUND INFORMATION IS OBTAINED FROM A PLAN ENTITLED "F.A. DAY MIDDLE SCHOOL - EXISTING CONDITIONS PLAN", PREPARED BY PRECISION LAND SURVEYING, INC., DATED OCTOBER 11, 2011.
  - ALL WATER LINES ARE DUCTILE IRON UNLESS OTHERWISE NOTED. ASSUME ALL WATER LINES INSTALLED WITH 5' OF COVER.
  - ASSUME ALL DRAINAGE LINES ARE 12" CPV UNLESS OTHERWISE NOTED. ASSUME ALL DRAIN LINES INSTALLED WITH 6' OF COVER UNLESS OTHERWISE NOTED.
  - ASSUME ALL ROOF DRAINAGE LINES ARE 8" PVC. ASSUME ALL SEWER LINES UNLESS OTHERWISE NOTED. ASSUME ALL DRAIN LINES INSTALLED WITH 4' OF COVER.
  - ASSUME THAT ALL SEWER LINES ARE 8" PVC. ASSUME ALL SEWER LINES INSTALLED WITH 6' OF COVER UNLESS OTHERWISE NOTED.
  - ASSUME ALL STRUCTURES ARE 4" INSIDE DIAMETER, EXCEPT FOR DOUBLE CIRCULAR STRUCTURES THAT ARE DIRECTLY CONNECTED TO THE UNDERGROUND DETENTION SYSTEM.
  - SEE MEP PLANS FOR SIZING ELECTRIC, CABLE, TELEPHONE AND LIGHTING.
  - SEE LANDSCAPE PLANS FOR CURBING AND SITE FEATURES.











CODE REVIEW	
<b>PROJECT DESCRIPTION</b>	
MIDDLE SCHOOL GRADES 6TH THROUGH 8TH PROJECTED ENROLLMENT BY 2015 = 800 STUDENTS / 140 STAFF	
PROJECT CONSISTS OF A NEW TWO-STORY ADMINISTRATION BUILDING WITH NEW SCHOOL ENTRANCE, A NEW TWO-CLASSROOM THIRD FLOOR ADDITION, MINOR RENOVATIONS TO THE EXISTING BUILDING THAT INCLUDES NEW CLASSROOMS AND REARRANGEMENT OF THE CAFETERIA, INSTALLATION OF A FULLY AUTOMATIC FIRE SUPPRESSION SPRINKLER SYSTEM THROUGHOUT THE EXISTING AND NEW BUILDINGS	
<b>EXISTING BUILDING CONSTRUCTION</b>	
-	STEEL FRAMED STRUCTURE WITH MASONRY VENEER ON STEEL STUD BACK UP.
-	FIRST FLOOR CONCRETE SLAB ON GRADE
<b>NEW BUILDING CONSTRUCTION</b>	
-	STEEL FRAMED STRUCTURE WITH STEEL ELEVATED FLOOR AND ROOF CONSTRUCTION
-	FIRST FLOOR CONCRETE SLAB ON GRADE
-	EXTERIOR WALL CONSTRUCTION SHALL MASONRY VENEER AND METAL PANEL ON LIGHT GAUGE STEEL STUD BACK-UP SYSTEM WITH CURTAIN WALL
-	ASSEMBLIES
-	INTERIOR PARTITIONS SHALL BE GYPSUM WALLBOARD ON METAL STUDS
APPLICABLE CODES	
2009 INTERNATIONAL BUILDING CODE (IA STATE BUILDING CODE - EIGHTH EDITION) 2009 INTERNATIONAL EXISTING BUILDING CODE	
USE & OCCUPANCY (IBC CH. 3)	
USE GROUP: E (EDUCATIONAL) WITH ASSEMBLY AREAS - CAFETERIA AND DINING ROOM - ARE CONSIDERED ACCESSORY AREAS TO USE GROUP E AND ARE NOT SEPARATE OCCUPANCIES (303.1.4)	
TYPE OF CONSTRUCTION (IBC CH. 6)	
ALL NEW CONSTRUCTION - NON-COMBUSTIBLE CONSTRUCTION TYPE II B UNPROTECTED CONSTRUCTION	
FIRE RESISTANCE RATINGS OF STRUCTURAL ELEMENTS - (IBC TABLE 601)	
ENTIRELY PROTECTED BY AN AUTOMATIC FIRE SUPPRESSION SYSTEM	
<b>BUILDING ELEMENTS CONSTRUCTION TYPE II B</b>	<b>MINIMUM RATING REQUIRED</b>
1. PRIMARY STRUCTURAL FRAME INCLUDING COLUMNS, GIRDERS, TRUSSES	0
2. EXTERIOR WALLS	0
3. NONBEARING WALLS AND PARTITIONS EXTERIOR	0
4. NONBEARING WALLS AND PARTITIONS INTERIOR	0
5. FLOOR CONSTRUCTION AND SECONDARY MEMBERS	0
6. ROOF CONSTRUCTION AND SECONDARY MEMBERS	0
FIRE RESISTANCE RATING OF MISCELLANEOUS ELEMENTS	
1) STORAGE ROOMS OVER 100 SF - PROVIDE AUTOMATIC FIRE EXTINGUISHING SYSTEM. SMOKE PARTITIONS REQUIRED PER 302.1.1	
2) BOILER ROOM - PROVIDE AUTOMATIC FIRE EXTINGUISHING SYSTEM. SMOKE PARTITIONS REQUIRED PER 302.1.1	
3) PENETRATIONS: NON-COMBUSTIBLE PENETRATING ITEMS (PIPES, CONDUITS, DUCTS, ETC.) THROUGH HORIZONTAL ASSEMBLIES WITHOUT A REQUIRED FIRE RESISTANCE RATING, CONNECTING 3 STORIES OR LESS ARE PERMITTED, PROVIDED THE ANNULAR SPACE IS FILLED WITH AN APPROVED NON-COMBUSTIBLE MATERIAL TO RESIST THE FREE PASSAGE OF FLAME AND THE PRODUCTS OF COMBUSTION	
4) CORRIDORS: 1 HOUR FOR USE GROUP E WITH SPRINKLER SYSTEM PER TABLE 1016.1	
5) VERTICAL EXIT ENCLOSURES/EXIT STAIRWAYS: 1 HOUR WHERE CONNECTING LESS THAN 4 STORIES PER 1016.1	
GENERAL BUILDING LIMITATIONS (IBC CH. 5)	
EXISTING BUILDING	
<b>HEIGHT LIMITATIONS - EDUCATION - CONSTRUCTION TYPE II B</b>	
TIRULAR HEIGHT (TABLE 503)	= 2 STORY, 35 FT
SPRINKLER INCREASE (504.2)	= 1 STORY, 20 FT
ALLOWABLE HEIGHT	= 3 STORY, 75 FT
<b>AREA LIMITATIONS - EDUCATION - CONSTRUCTION TYPE II B</b>	
TIRULAR AREA (TABLE 503)	= 14,900 SF
STREET FRONTAGE INCREASE (505.2)	= 6,800 SF
ALLOWABLE AREA PER FLOOR	= 29,000 SF
ALLOWABLE AREA FOR 3-STORY BUILDING	= 86,400 SF
ACTUAL AREA OF 3-STORY BUILDING	= 151,380 SF AGGREGATE AREA
ACTUAL AREA OF 3-STORY BUILDING	= 144,780 SF AGGREGATE AREA
<b>STREET FRONTAGE INCREASE CALCULATION</b>	
1/2 OF PERIMETER WALL WITH 20% OF OPEN AREA	= 77.16 X 30' = 2317
% OF WEIGHTED AVERAGE OF PORTIONS OF PERIMETER WALL BETWEEN 20' AND 30' OPEN AREA	= 6.0% X 25' = 1.5'
% OF PERIMETER WALL WITH LESS THAN 20' OPEN AREA	= 16.9% X 0' = 0.0'
W = WIDTH OF PUBLIC WAY OR OPEN SPACE	= 24' + 16' = 40'
P = PERIMETER OF ENTIRE BUILDING	= 1,339.7'
F = BUILDING PERIMETER THAT FRONT ON W	= 1,157.90'
FRONTAGE INCREASE: $W/P \times P \times 0.25$ IN 0	= 0.48'
NEW BUILDING	
<b>HEIGHT LIMITATIONS - EDUCATION - CONSTRUCTION TYPE II B</b>	
TIRULAR HEIGHT (TABLE 503)	= 2 STORY, 35 FT
SPRINKLER INCREASE (504.2)	= 1 STORY, 20 FT
ALLOWABLE HEIGHT	= 3 STORY, 75 FT
<b>AREA LIMITATIONS - EDUCATION - CONSTRUCTION TYPE II B</b>	
TIRULAR AREA (TABLE 503)	= 14,900 SF
STREET FRONTAGE INCREASE (505.2)	= 29,000 SF
ALLOWABLE AREA PER FLOOR	= 43,500 SF
ALLOWABLE AREA FOR 3-STORY BUILDING	= 130,500 SF AGGREGATE AREA
ACTUAL AREA OF 3-STORY BUILDING	= 5,312 SF AGGREGATE AREA
BUILDING AREAS (IBC CH. 5)	
EXISTING FIRST FLOOR BUILDING AREA	58,676 GSF
EXISTING SECOND FLOOR BUILDING AREA	58,216 GSF
EXISTING THIRD FLOOR BUILDING AREA	27,790 GSF
TOTAL EXISTING BUILDING AREA	144,682 GSF
NEW THIRD FLOOR BUILDING AREA	2,078 GSF
TOTAL EXISTING + NEW THIRD FLOOR BUILDING AREA	146,760 GSF
NEW FIRST FLOOR BUILDING AREA	2,459 GSF
NEW SECOND FLOOR BUILDING AREA	2,863 GSF
TOTAL NEW BUILDING AREA	5,312 GSF
TOTAL EXISTING AND NEW BUILDING AREA	152,072 GSF
MEANS OF EGRESS (CH. 10)	
MAXIMUM LENGTH OF EXIT ACCESS TRAVEL (TABLE 1016.1.1 OCCUPANCY)	= 250 FEET WITH SPRINKLERS
DESIGN OCCUPANT LOAD & EGRESS UNITS ARE INDICATED ON PLANS OF EACH FLOOR	
EGRESS WIDTH PER OCCUPANT (PER AMENDMENT TO IBC 2009 - SECTION 1008.1)	
- STAIRWAY	= 2 1/2 INCH PER PERSON
- DOORS	= 15 INCH PER PERSON
- CORRIDORS	= 15 INCH PER PERSON
LENGTH OF DEAD END CORRIDORS (1016.4 EXCEPTION 2) SHALL NOT EXCEED 50 FT WHEN THE BUILDING IS EQUIPPED THROUGHOUT WITH AN AUTOMATIC FIRE SUPPRESSION SYSTEM	
MINIMUM WIDTH OF CORRIDORS (1016.2)	
- FOR OCCUPANT CAPACITY OF 50 OR LESS	= 3'
- FOR OCCUPANT CAPACITY OF 51 TO 99	= 4'
- FOR OCCUPANT CAPACITY GREATER THAN 100 OR MORE	= 7'
MINIMUM FLOOR AREA ALLOWANCES PER OCCUPANT (TABLE 100A.1.2)	
FUNCTION OF SPACE	FLOOR AREA IN SQ. FT. PER OCC.
ASSEMBLY WITH FIXED SEATS	= 7 NET
- CHAIRS ONLY (CONCENTRATED)	= 15 NET
- CHAIRS & TABLES (NONCONCENTRATED)	= 20 NET
CLASSROOM	= 50 NET
SHOPS AND VOCATIONAL AREAS (DANCE, ART)	= 200 GROSS
LIBRARY	= 50 NET
READING AREA	= 100 GROSS
STAGE AREA	= 15 NET
MEDIA & ACCESSORY STORAGE	= 300 GROSS
OFFICE/BUSINESS	= 100 GROSS

CODE SHEET GENERAL NOTES	
1) CODE SHEET GENERAL NOTES, LEGEND AND ABBREVIATIONS APPLY TO SHEETS A0.1, A0.2 & A0.3	
2) REFER TO SHEET A0.2 FOR PLUMBING FIXTURE ANALYSIS	
3) GROSS AREA FOR SECOND FLOOR EXCLUDES THE AREAS THAT ARE DOUBLE HEIGHT SPACES. GROSS AREA ALSO EXCLUDES FLOOR OPENINGS AT STAIRS AND THROUGH-FLOOR MECHANICAL CHASES	
4) EGRESS AT EXTERIOR DOORS IS CALCULATED FROM THE FLOOR WITH THE HIGHER OCCUPANCY LOAD	
CODE SHEET ABBREVIATIONS	
(SEE SHEET A0.1 FOR ADDITIONAL ABBREVIATION DESIGNATIONS)	
CUET	= CUSTODIAN
DF	= DRINKING FOUNTAIN
ELEC	= ELECTRICAL
EXT	= EXTERIOR
GF	= GROSS SQUARE FOOTAGE
LAV	= LAVATORY
MEP	= MECHANICAL ELECTRICAL PLUMBING
NSF	= NET SQUARE FEET USE AREA, EXCLUDES BUILT IN STORAGE AREAS
OCC	= OCCUPANCY
SF	= SQUARE FOOTAGE
STOR	= STORAGE
UND	= UNLESS NOTED OTHERWISE
UR	= URINAL
WC	= WATERCLOSET
CODE SHEET LEGEND	
ONE (1) HOUR ENCLOSED SPACE	
TWO (2) HOUR ENCLOSED SPACE	
ONE (1) HOUR FIRE PARTITION	
TWO (2) HOUR FIRE WALL	
SMOKE PARTITION	
ROOM OCCUPANCY	
COLLECTED EGRESS OCCUPANCY COUNT AT EXIT STAIRS AND DOORS	
EGRESS CONVERGENCE	
EGRESS OCCUPANT LOAD	
EGRESS DIRECTION ARROW	

FIRST FLOOR PLAN	
EXISTING BUILDING GROSS FIRST FLOOR AREA	58,676 GSF
NEW BUILDING GROSS FIRST FLOOR AREA	2,459 GSF
TOTAL GROSS FIRST FLOOR AREA	61,135 GSF
OCCUPANT LOAD	1,338 OCC
EGRESS CAPACITY	4,488 OCC



HMF Architects, Inc.  
130 Blinn Avenue, Suite 200  
Newtown, MA 01469  
Tel: 978.238.1100  
www.hmf.com

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50% SCHEMATIC DESIGN REVIEW SET  
10/20/2011



Renovations and Additions to the  
F.A. Day Middle School  
Newtown, MA  
Code Sheet - First Floor  
SCALE: 1/8" = 1'-0"  
DRAWN BY: Author  
CHECKED BY: Designer

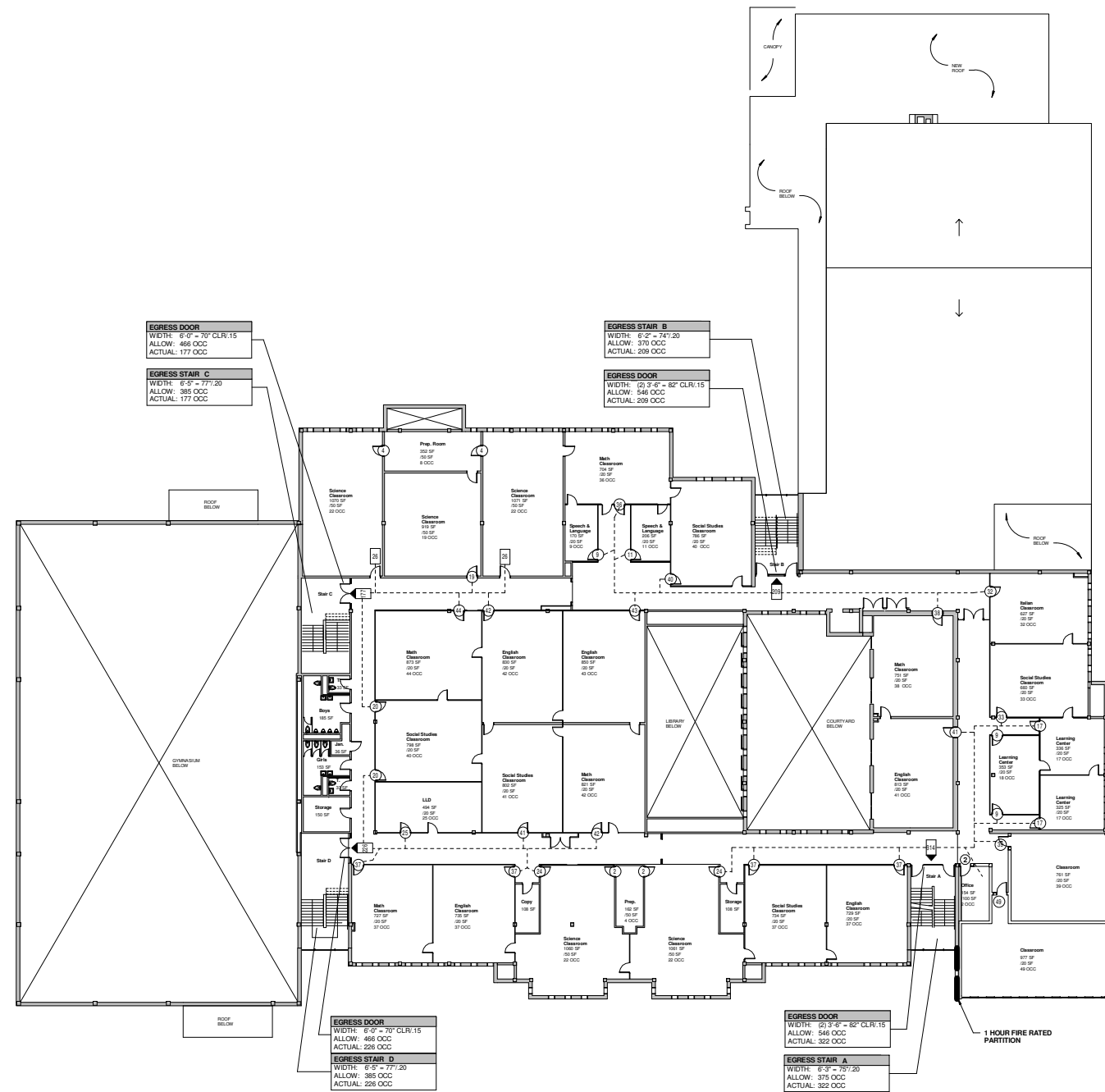
A0.1  
JOB NUMBER 40211





HMF Architects, Inc.  
100 Shrewsbury Avenue  
Newton, MA 02459  
617.552.2200  
www.hmf.com

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**EGRESS DOOR**  
WIDTH: 8'-0" - 70' CLR: 15'  
ALLOW: 496 OCC  
ACTUAL: 177 OCC

**EGRESS STAIR C**  
WIDTH: 8'-5" - 777.20  
ALLOW: 385 OCC  
ACTUAL: 177 OCC

**EGRESS STAIR B**  
WIDTH: 8'-2" - 747.20  
ALLOW: 370 OCC  
ACTUAL: 209 OCC

**EGRESS DOOR**  
WIDTH: (2) 3'-8" - 82' CLR: 15'  
ALLOW: 548 OCC  
ACTUAL: 209 OCC

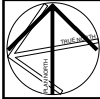
**EGRESS DOOR**  
WIDTH: 8'-0" - 70' CLR: 15'  
ALLOW: 496 OCC  
ACTUAL: 228 OCC

**EGRESS STAIR D**  
WIDTH: 8'-5" - 777.20  
ALLOW: 385 OCC  
ACTUAL: 228 OCC

**EGRESS DOOR**  
WIDTH: (2) 3'-8" - 82' CLR: 15'  
ALLOW: 548 OCC  
ACTUAL: 322 OCC

**EGRESS STAIR A**  
WIDTH: 8'-5" - 777.20  
ALLOW: 375 OCC  
ACTUAL: 322 OCC

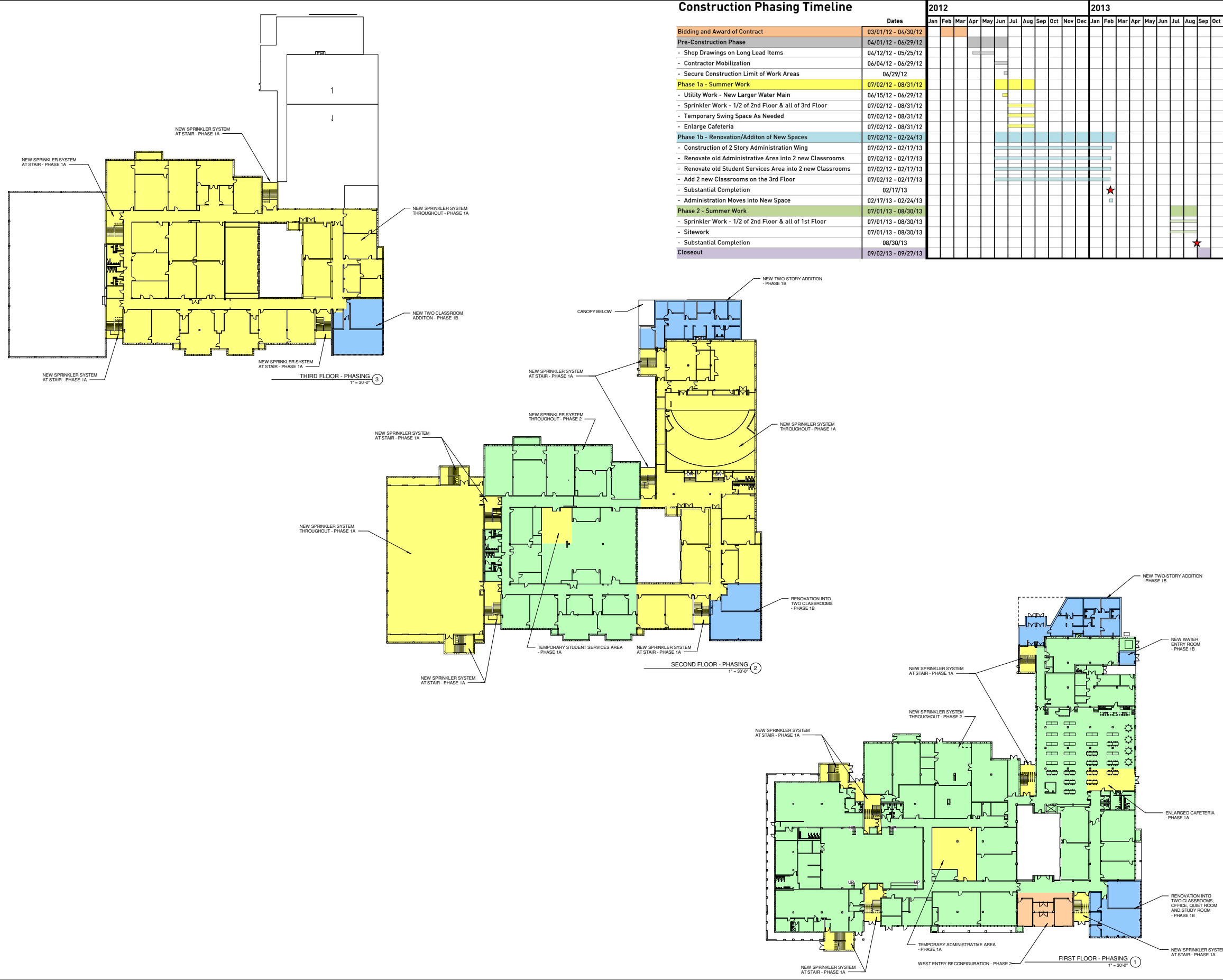
50% SCHEMATIC DESIGN REVIEW SET  
10/20/2011



Renovations and Additions to the  
F.A. Day Middle School  
Newton, MA  
Code Sheet - Third Floor  
SCALE: 1/8" = 1'-0" DRAWN BY: A.P.B. CHECKED BY: C.D.B.

THIRD FLOOR PLAN	
EXISTING BUILDING GROSS THIRD FLOOR AREA	47,296 GSF
NEW THIRD FLOOR AREA	2,678 GSF
TOTAL GROSS THIRD FLOOR AREA	50,000 GSF
OCCUPANT LOAD	194 OCC
EGRESS CAPACITY	1,515 OCC

PHYSIC NUMBER  
**A0.3**  
JOB NUMBER 40211



**Construction Phasing Timeline**

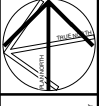
Dates	2012												2013											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>Bidding and Award of Contract</b>	03/01/12 - 04/30/12																							
<b>Pre-Construction Phase</b>	04/01/12 - 06/29/12																							
- Shop Drawings on Long Lead Items	04/12/12 - 05/25/12																							
- Contractor Mobilization	06/04/12 - 06/29/12																							
- Secure Construction Limit of Work Areas	06/29/12																							
<b>Phase 1a - Summer Work</b>	07/02/12 - 08/31/12																							
- Utility Work - New Larger Water Main	06/15/12 - 06/29/12																							
- Sprinkler Work - 1/2 of 2nd Floor & all of 3rd Floor	07/02/12 - 08/31/12																							
- Temporary Swing Space As Needed	07/02/12 - 08/31/12																							
- Enlarge Cafeteria	07/02/12 - 08/31/12																							
<b>Phase 1b - Renovation/Addition of New Spaces</b>	07/02/12 - 02/24/13																							
- Construction of 2 Story Administration Wing	07/02/12 - 02/17/13																							
- Renovate old Administrative Area into 2 new Classrooms	07/02/12 - 02/17/13																							
- Renovate old Student Services Area into 2 new Classrooms	07/02/12 - 02/17/13																							
- Add 2 new Classrooms on the 3rd Floor	07/02/12 - 02/17/13																							
- Substantial Completion	02/17/13																							
- Administration Moves into New Space	02/17/13 - 02/24/13																							
<b>Phase 2 - Summer Work</b>	07/01/13 - 08/30/13																							
- Sprinkler Work - 1/2 of 2nd Floor & all of 1st Floor	07/01/13 - 08/30/13																							
- Sitework	07/01/13 - 08/30/13																							
- Substantial Completion	08/30/13																							
<b>Closeout</b>	09/02/13 - 09/27/13																							



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617.552.2201  
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10/20/2011



Renovations and Additions to the  
F.A. Day Middle School  
Newton, MA  
Phasing Plan  
SCALE: 1" = 30'-0"  
DRAWN BY: Author  
CHECKED BY: Designer

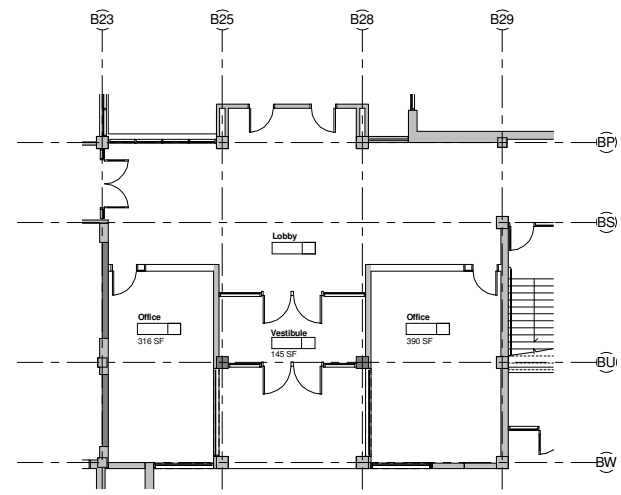
**A1.1**

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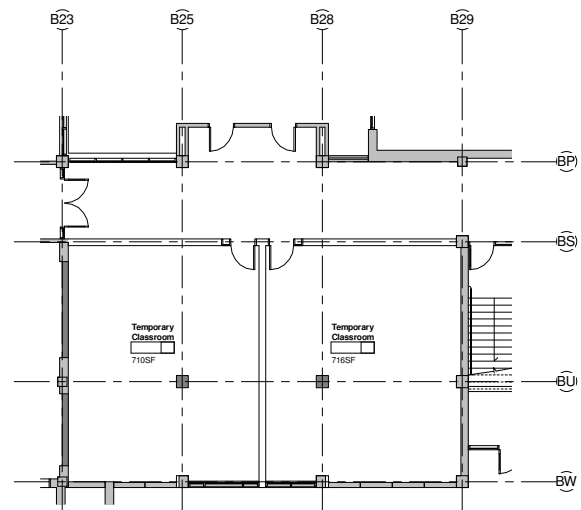


HMF Architects, Inc.  
100 Blinnwood Avenue  
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617.552.2200  
www.hmf.com

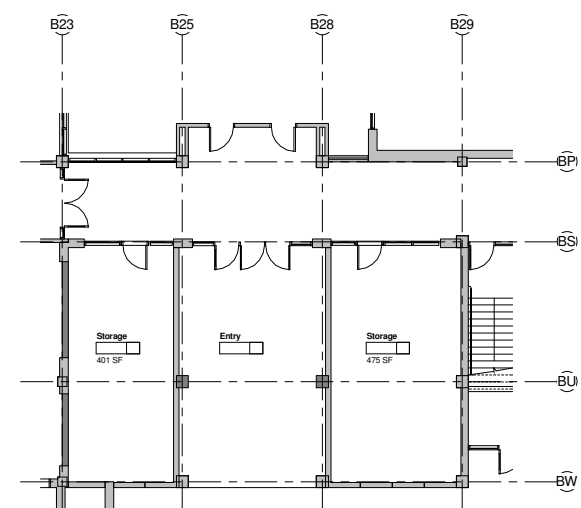
architecture ■ programming ■ master planning



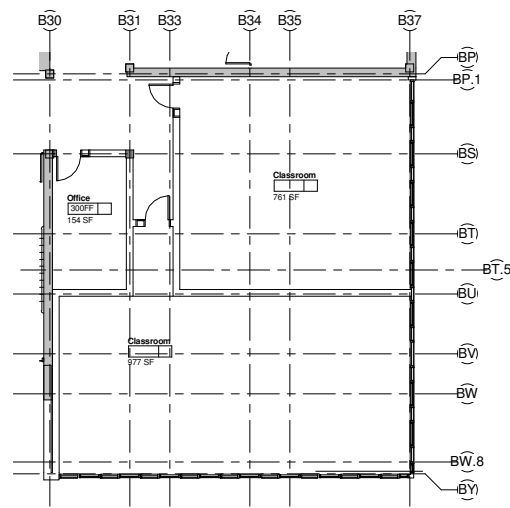
FINAL ALTERATION  
1/8" = 1'-0" 9



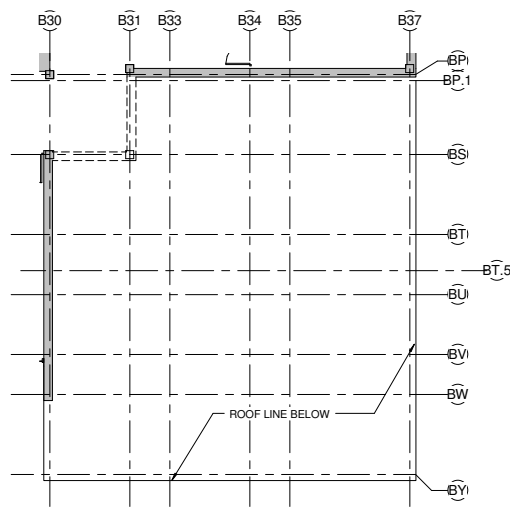
TEMPORARY CLASSROOM  
1/8" = 1'-0" 8



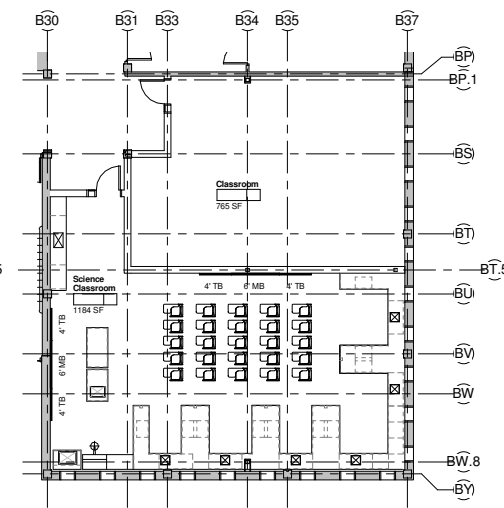
EXISTING ENTRY  
1/8" = 1'-0" 7  
ALTERNATE #2



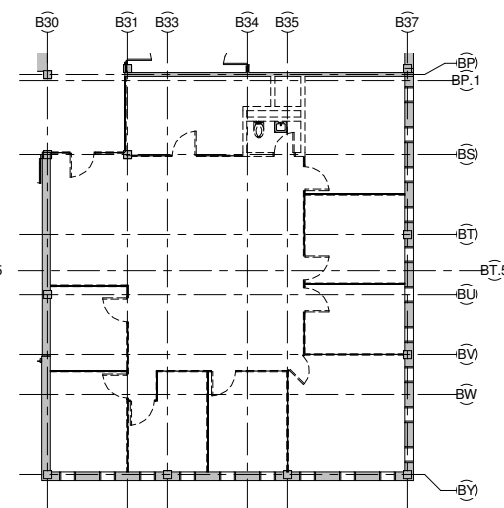
CLASSROOM/CLASSROOM - PROPOSED - THIRD FLOOR - SHEET 5  
1/8" = 1'-0"



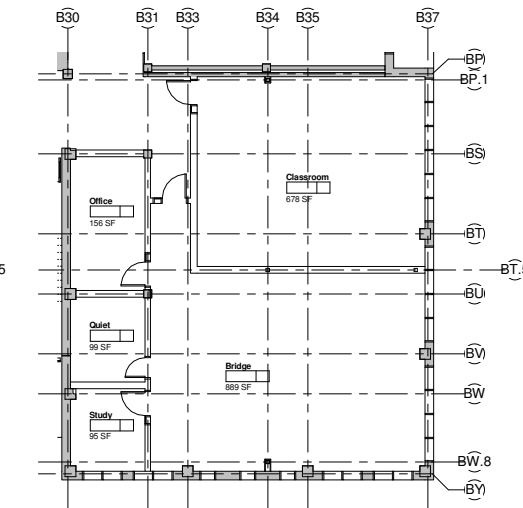
DEMO - THIRD FLOOR  
1/8" = 1'-0" 6



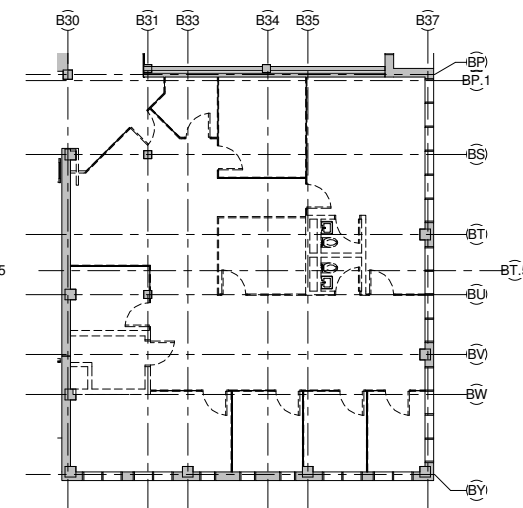
SCIENCE RM / CLASSROOM - PROPOSED - SECOND FLOOR 3  
ALTERNATE #1 - CLASSROOM TO BE OUTFITTED AS A 6TH GRADE SCIENCE CLASSROOM



SCIENCE RM / CLASSROOM - DEMO - SECOND FLOOR 4  
1/8" = 1'-0"

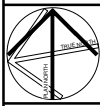


CLASSROOM/CLASSROOM - PROPOSED - FIRST FLOOR 1



CLASSROOM/CLASSROOM - DEMO - FIRST FLOOR 2  
1/8" = 1'-0"

50% SCHEMATIC DESIGN REVIEW SET  
10/20/2011



Renovations and Additions to the  
F.A. Day Middle School  
Newton, MA  
CR Layout / West Entry  
SCALE: 1/8" = 1'-0"  
DRAWN BY: A.P.B. CHECKED BY: C.D.B.

A2.1

JOB NUMBER 40211



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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TDD/TTY  
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E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

In accordance with the Revised City of Newton Financial Management Guidelines, adopted April 20, 2011, I write to request that your Honorable Board docket for consideration the Fiscal Year 2013 through Fiscal Year 2017 5-Year Financial Forecast.

Thank you for your consideration of this matter.

Very truly yours,

Seth D. Warren  
Mayor

11 OCT 31 P 3 12  
CITY CLERK  
NEWTON, MA 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

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SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$15,000 from FY2011 Free Cash for the purchase of a vehicle for one of the environmental health inspectors in the Health and Human Services Department. Although the City does have "pool cars", they are not a viable solution for an environmental inspector who must be out in the community for most of their workday.

Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Setti D. Warren".

Setti D. Warren  
Mayor

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA. 02159

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



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City of Newton



Setti D. Warren  
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT

Dori Zaleznik, MD., Commissioner

1294 Centre Street  
Newton, MA 02459-1544

Telephone 617.796.1420 Fax 617.552.7063



**Public Health**  
Prevent. Promote. Protect.

November 1, 2011

Maureen Lemieux  
Chief Financial Officer  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Ms. Lemieux:

I am writing to request a fourth vehicle for the Environmental Health Specialists. The Department of Health and Human Services had four vehicles for four inspectors until Bob DeLuca went on leave. We had his old Crown Victoria taken to the yard for inspection and servicing where it was condemned. After Bob retired at the end of July, we hired another inspector in September to return us to a full complement of four. The inspectors are out in the field each day. We explored signing out a pool vehicle at City Hall but found there are not enough vehicles in the pool to guarantee the use of one, and the inspector would have to go each day to City Hall to see if a car was available.

We currently have two Ford Focus cars and one Prius. These cars are a good size to carry the necessary inspection items but small enough to be nimble getting around the city. We respectfully ask for \$15,000 from FY2011 Free Cash to purchase a fourth car so that each inspector can be out in the city each day to perform his or her work.

Sincerely,

A handwritten signature in cursive script that reads "Dori Zaleznik".

Dori Zaleznik, MD  
Commissioner

DZ:bm





SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$6,399 from FY2011 Free Cash for the purpose of purchasing a gear dryer to be placed at Station #4 on Crafts Street.

This equipment will add to the preservation and longevity of the protective clothing. Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



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Bruce A. Proia  
Acting Chief

**CITY OF NEWTON, MASSACHUSETTS**  
**FIRE DEPARTMENT HEADQUARTERS**

**1164 Centre Street, Newton Center, MA 02459-1584**  
**Chief: (617) 796-2210 Fire Prevention: (617) 796-2230**  
**FAX: (617) 796-2211 EMERGENCY: 911**



Setti D. Warren  
Mayor

May 26, 2011

Honorable Setti D. Warren, Mayor  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Mayor Warren:

I respectfully request a special appropriation in the amount of \$6,399.00 for a gear dryer to be placed at Station #4 on Crafts Street.

In order to preserve and add to the longevity of the protective clothing, it is mandatory that the men wash their protective clothing after each and every fire and, in accordance with the NFPA Standard, all gear is routinely washed twice a year. The drying time for the bunker gear without the dryer is approximately two (2) days.

Thank you for your consideration in the very important matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Proia".

Bruce A. Proia  
Acting Chief of Department

BAP/cf

cc: Maureen Lemieux, Chief Budget Officer

# Nelson & Small, Inc.

V# 109101

Import · Export · Manufacturing · Distribution of World Class Products

City of Newton Massachusetts  
1000 Commonwealth Avenue  
Newton, MA 02159  
Franklin, MA 02038

14-Oct-09

Contact: Deputy Chief Proia  
Phone: 617-796-2203  
Email: bproia@newtonma.gov

Ship To: Newton Fire Department  
Fire Station 4

## PROPOSAL II

Qty	Model #	Description	Sell	Ext. Sell
1	DGA330-B00	DRYGEAR PLUS Gear Dryer, 3 Station with Wheels Remoable Hangers Dimensions: Length: 71 inches Width: 37 inches Height: 84 inches	\$ 5,399.00	\$ 5,399.00
Sub Total			\$	5,399.00
MA Sales Tax				Tax Exempt
Incoming Freight			\$	300.00
Installation			\$	700.00
<b>TOTAL</b>			<b>\$</b>	<b>6,399.00</b>

**Terms:** Net upon receipt of invoice with Purchase Order  
Normal credit procedures are to be followed.  
These prices are good for thirty days form the date of the proposal.

**Deliver:** By Nelson & Small, Inc.

**Installation:** Nelson & Small, Inc. will deliver, uncrate, assemble unit ready for use.  
Customer is responsible for electrical.  
N&S will do a start up and initial training on unit.  
Lead Time 4-6 weeks ( Special Order)

Nelson & Small, Inc.

  
Thomas Tobiasen  
Commercial Laundry Division

When you have accepted, please sign and return one copy.

BY: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#358-11

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swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$50,000 from FY2011 Free Cash for the purpose of upgrading the City Hall Uninterrupted Power Supply in order to insure the protection of vital financial and computerized City information.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



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SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$30,000 from FY2011 Free Cash for the purpose of upgrading network equipment in the City Hall computer room to gigabit speed.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

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SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:48  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to authorize a lump sum settlement \$35,000 for a Workers' Compensation claim.

This settlement will close out all portions of the former employee's compensation claim, including the following sections of Mass General Law, Chapter 152, Sections 34, 35, 34A, and 36, as well as the former employee's attorney fees.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



Setti D. Warren  
Mayor

**DEPARTMENT OF HUMAN RESOURCES**

1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

Telephone (617) 796-1260

Fax (617) 796-1272

TTY (617) 796-1089

Dolores M. Hamilton, Director

October 27, 2011

Mayor Setti D. Warren and  
Honorable Board of Aldermen  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: Matthew Bovarnick  
City of Newton/Self-Insurer  
Lump Sum Settlement/Sections 34, 35, 34A, 36, and Attorney's Fees  
DOI: 2/11/09

Dear Mayor Warren and Honorable Board of Aldermen:

I respectfully recommend and request your approval to settle this employee's workers' compensation claims (sections 34, 35, 34A, 36, and attorney's fees) against the City of Newton relevant to his injury of 2/11/09, in the amount of \$35,000.00.

I would appreciate your docketing this item on the agenda for the Board meeting scheduled for November 14, 2011.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Dolores Hamilton".

Dolores Hamilton  
Director of Human Resources  
Workers' Compensation Agent

DH/lb



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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TDD-TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:48  
CITY CLERK  
NEWTON, MA, 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to transfer the sum of \$175,000 from FY2011 Free Cash to the Other Post Employment Benefits Liability Trust Fund.

As you know, the City established this trust fund during the past year. Per the City's financial management guidelines adopted by the Honorable Board, this appropriation is slightly larger than the amount appropriated to this account last year. The FY13-FY17 Five-Year Financial Forecast includes the implementation of a budgeted funding source for this liability.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

From:	Free Cash	
	01-3497	\$175,000
To:	Transfer to OPEB Fund	
	0110499-593045	\$175,000

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



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SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 1 P 2:48  
CITY CLERK  
NEWTON, MA 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to transfer the sum of \$500,000 from FY2011 Free Cash to the "Rainy Day Stabilization Fund".

It is my intent to continue to appropriate funding on an annual basis to this account until such time as it is equal to at least 5% of the General Fund Operating Budget.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

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Facsimile  
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TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 NOV - 4 P 4: 15  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to authorize a Section 36 - lump sum settlement for loss of function and disfigurement in the amount of \$7,616 for a Workers' Compensation claim.

This settlement will close out all portions of the employee's Section 36 compensation claim , including the employee's attorney fees.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor



City of Newton



Setti D. Warren  
Mayor

**DEPARTMENT OF HUMAN RESOURCES**

1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

Telephone (617) 796-1260

Fax (617) 796-1272

TTY (617) 796-1089

Dolores M. Hamilton, Director

November 4, 2011

Mayor Setti D. Warren and  
Honorable Board of Aldermen  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: Peter Forte  
City of Newton/Self-Insurer  
Settlement, Section 36, and Attorney's Fees  
DOI: 10/28/10

Dear Mayor Warren and Honorable Board of Aldermen:

I respectfully recommend and request your approval to settle this employee's workers' compensation claim for scarring and disfigurement, as ordered by the Department of Industrial Accidents, Section 36, and Attorney's fees.

I would appreciate your docketing this item on the agenda for the Board meeting scheduled for November 14, 2011.

Respectfully Submitted,

Dolores Hamilton  
Director of Human Resources  
Workers' Compensation Agent

DH/lb

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF INDUSTRIAL ACCIDENTS

EMPLOYEE: Peter Forte  
EMPLOYER: CITY OF NEWTON  
INSURER: CITY OF NEWTON  
D.O.I.: 10/28/10  
BOARD NO.: 28024-10

SECTION 19 AGREEMENT

This matter involves a claim for specific injury benefits pursuant to M.G.L. Chapter 152, Section 36.

The parties have reached a compromise in resolving this claim based upon the following measurements of two separate one inch scars located on the employee's left hand:

2 inches (wide, discolored):

$2.5 \times 1,088.06 \times 2 \text{ inches} = \$5,440.00$

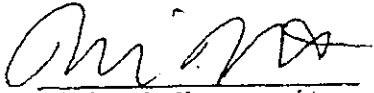
And the very slight disfigurement of the Employee's left hand:

$2 \times 1,088.06 = \$2,176.00$

In total, the City of Newton agrees to pay Peter Forte a total sum of \$7,616.00 less an attorney fee in the amount of \$747.75. The net amount of \$6,868.25, made payable to the Employee, represents an award for the scarring and disfigurement of the Employee's left hand resulting from the Industrial Accident of October 28, 2010. The Self-Insurer further agrees to pay Employee counsel, Martin Kantrovitz, the amount of \$747.75.

The parties agree that all payments made pursuant to this Agreement are made on a **without prejudice and without liability basis.**

EMPLOYEE: Peter Forte  
EMPLOYER: CITY OF NEWTON  
INSURER: CITY OF NEWTON  
D.O.I.: 10/28/10  
BOARD NO.: 28024-10



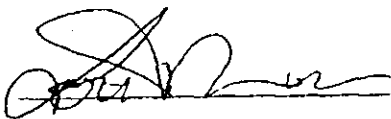
Michael Kantrovitz, Esq.  
Counsel for Employee



Peter Forte  
Employee

9/13/11  
Date

9/11/11  
Date

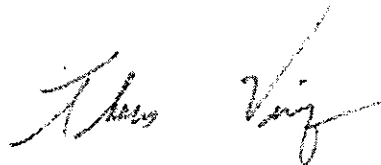


Representative for Insurer  
Lori D Burke RN MPH, CPH, CHS

Department of Industrial  
Accidents

9/25/11  
Date

Date



Digitally signed by Tom  
Vincequere  
DN: cn=Tom Vincequere,  
o=DIA, ou=Conciliation,  
email=Thomasv@dia.state.m  
a.us, c=US  
Date: 2011.10.03 12:20:57  
-04'00'



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#366-11

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E-mail  
swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$23,000 from FY2011 Free Cash for the purchase of 11 Automatic Emergency Defibrillators. Nine of these AED's will replace those that are currently in police cruisers while the other two will be placed at Police Headquarters. The current units are 9 years old and replacement parts are no longer available for some models.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



Setti D. Warren  
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT

Dori Zaleznik, MD., Commissioner

1294 Centre Street  
Newton, MA 02459-1544

Telephone 617.796.1420 Fax 617.552.7063



**Public Health**  
Prevent. Promote. Protect.

November 1, 2011

Maureen Lemieux  
Chief Financial Officer  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Ms. Lemieux:

I am requesting \$23,000 from FY2011 Free Cash to replace the 11 AEDs in the Police Department. The EMS Committee, composed of Health, Fire, Police, ambulance service, and three Emergency Department physicians from different institutions, has been discussing the regular maintenance and replacement program that should accompany having defibrillators in all of our public buildings and public safety vehicles.

The units in the nine police cruisers and the two at the station are nine years old and should have been replaced at least two years ago. The 11 Medtronic Phios 500 devices, which they currently have, are no longer being manufactured. The Fire Department has Medtronic Phios 1000s, and we request the money to purchase 11 of these units for the Police in order to standardize what city emergency vehicles carry, share replacement parts, and avoid the need for adaptors. We will use the old 500s as supplementary units elsewhere in the city as long as replacement parts are still available. However, to ensure that these critical lifesaving devices function when called upon, it is vital that AEDs are inspected, serviced, maintained, and swapped out as needed.

Sincerely,

Dori Zaleznik, MD  
Commissioner

DZ:bm



SETTI D. WARREN  
MAYOR

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Office of the Mayor

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October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$39,160 from FY2011 Free Cash for the purchase and installation of "on-spot" chains for fire apparatus.

This equipment will add to the safety of fire personnel responding to emergencies during inclement weather. Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



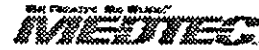
DEDICATED TO COMMUNITY EXCELLENCE



## REPAIR ESTIMATE



**MINUTEMAN FIRE AND RESCUE**  
 2181 PROVIDENCE HIGHWAY  
 WALPOLE, MA 02081  
 FAX (508) 668-3043  
 WWW.MINUTEMANTRUCKS.COM



<b>NAME</b>	NEWTON FIRE DEPARTMENT	<b>DATE</b>	9-14-11	<b>RO#</b>	ESTIMATE
<b>PHONE</b>	617-796-2210	<b>VIN</b>			
<b>ADDRESS</b>	1164 CENTRE ST	<b>MAKE/ MODEL</b>			
<b>TOWN/CITY</b>	NEWTON	<b>ENGINE</b>			
<b>STATE</b>	MA	<b>MILEAGE</b>			
<b>ZIP</b>	02459	<b>PLATE#</b>			

<b>JOB DESCRIPTION:</b> INSTALL ON SPOTS ON PUMPERS	<b>SERVICE WRITER</b> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>
---	--

HOURS	LABOR	LABOR RATE	TOTAL
-	DIAGNOSTIC TIME	\$ -	\$ -
-	LABOR (CPR)	\$ -	\$ 1,200.00
-	TOW CHARGE	\$ -	\$ -
QTY.	DISCRPTION	LABOR	PARTS
-	ON-SPOT CHAINS INSTALLATION PACKAGE	\$ -	\$ 1,900.00
-	MISC HARDWARE	\$ -	\$ 250.00
-	APROX FREIGHT	\$ -	\$ 150.00
-		\$ -	\$ -
-	<b>NOTE: ON-SPOT CHAINS ARE NOT RECOMMENDED TO BE INSTALLED ON ANY AERIAL OR LADDERS PER ON-SPOT CHAIN COMPANY</b>	\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-	<b>THIS ESTIMATE IS PER TRUCK AND ANY TRUCK THAT THE ON SPOTS ARE TO BE INSTALLED HAS TO BE MEASURED PRIOR PRICE MAY VARY PER TRUCK MEASUREMENT</b>	\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -
-		\$ -	\$ -

The above is an estimate based on our inspection and does not cover any additional parts or labor which may be required after the work has been opened up. Occasionally after the work has been started, worn or damaged parts are discovered which were not evident on the first inspection. Because of this, the above prices are not guaranteed. All additional parts or labor will be submitted to our customers for approval.

**MEMO**

Diagnostic Time	\$ -
Repair Labor	\$ 1,200.00
<b>Total Labor</b>	<b>\$ 1,200.00</b>
Tow Charge	\$ -
<b>Parts Total</b>	<b>\$ 2,300.00</b>
Tax	EXEMPT
MPSS	\$ 60.00
Sublet	\$ -
<b>Total</b>	<b>\$ 3,560.00</b>

*Thank You For Your Business!*

<b>Approval Signature -</b>	<b>Date:</b>
-----------------------------	--------------

X 11 =  
 39,100.00  
 TOTAL

nim



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#368-11

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swarren@newtonma.gov

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 OCT 31 P 2:49  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$120,000 from FY2011 Free Cash for the purpose of purchasing and installing Mobile Data Terminals for incident communications with GPS for all 9 front line Fire Apparatus, the spare vehicle and 2 chief's vehicles.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE



Setti D. Warren  
Mayor

**CITY OF NEWTON, MASSACHUSETTS  
FIRE DEPARTMENT HEADQUARTERS**

1164 Centre Street, Newton Center, MA 02459-1584  
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230  
FAX: (617) 796-2211 EMERGENCY: 911

#368-11



Joseph E. LaCroix  
Chief

March 2, 2010

RE: Mobile Data Connections

You need to build a proper foundation of network infrastructure prior to deploying any mobile applications.

You will need the following:

Windows Server running IIS Raid 5 redundant drives to replace Novell @ \$6,000.00.

Several Net Drives (1 Terabyte \$350.00/ea) for storage and backups – need 3 @ \$1,050.00/ea.

Mobile Computers (Datalux Mil Spec. – \$5,000.00/ea) x 20 = \$100,000.00.

Extra Portables and Drives – 2 @ \$5,000.00 = \$10,000.00.

Management software for portables.

Private Network Switch to keep access restricted from Public.

T1 Line from communication service vendor.

Air cards – \$100.00/ea – Service @ \$60.00 per month per card.

We met with the Police Department to discuss what we would need to start using mobile data terminals in our vehicles. The laptops would allow us to access CAD, the internet (i.e. CAMEO) as well as any databases that we create (i.e. inspection forms).

The following is a quick summary of our meeting:

- Needs Assessment.
  1. Mobile computers. Proposed to use Datalux mobile computer.
  2. A new external server with dual power supply, redundant drives, 2 network cards, 2 gigabytes of memory and backup.
  3. An Air Network Card.
  4. Software.
  5. Mounting brackets.

March 2, 2010  
Page 2

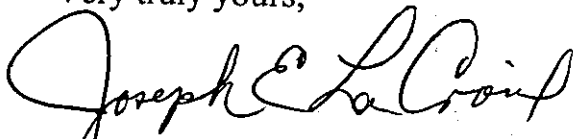
- Cost Estimate.

1. MDT – \$5,000.00 ( x 20) \$100,000.00
2. Server – \$6,000.00
3. Air Card Service = \$60.00 per month per card. (x 20) \$14,400.00
4. Air Cards = \$100.00/ea (x 20 ) \$2,000.00
5. Software = \$3,000.00
6. Mounting brackets = \$400.00 each (x 4) spare apparatus mounts \$1,600.00

1. Purchase and install equipment for computer network infrastructure to upgrade Fire Department network to allow wireless and wired connectivity to fire and dispatch networks. Equipment includes web server, wireless switch/router interface, manageable switches/hubs.
2. Purchase and program software for fire specific applications including inspections, ticketing, fire investigation, hazardous materials and code compliance.
3. Purchase and implement mobile computers with wireless connectivity for all fire department apparatus and vehicles.

**TOTAL COST ESTIMATE: \$138,050.00**

Very truly yours,



Joseph E. LaCroix  
Chief of Department

JEL/cf

#369-11

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E-mail  
swarren@newtonma.gov



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

October 31, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to authorize the following appropriation and authorize a general obligation borrowing of an equal amount for the purpose of funding the FY2012 Capital Improvement Plan.

<u>Project</u>	<u>Amount</u>
Purchase of Fire Apparatus – Replacement of Engine #10	\$600,000

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

OCT 31 P 2:48  
CITY CLERK  
NEWTON, MA. 02159





Bruce A. Proia  
Chief

**CITY OF NEWTON, MASSACHUSETTS  
FIRE DEPARTMENT HEADQUARTERS**

**1164 Centre Street, Newton Center, MA 02459-1584  
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230  
FAX: (617) 796-2211 EMERGENCY: 911**



Setti D. Warren  
Mayor

November 1, 2011

Honorable Setti D. Warren, Mayor  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Mayor Warren:

I respectfully request funding in the amount of \$600,000.00 for the replacement of the department's Engine 10.

Engine 10 is a 24 year old pumper purchased in 1987 and beyond the the age recommendation of the NFPA Standard for first line apparatus which is 15 years, it is still being used as such. Once replaced, Engine 10 would become our number one spare, allowing us to decommission spare apparatus Engine 11 which is 27 years old.

Thank you very much for your time and consideration in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "BAP".

Bruce A. Proia  
Chief of Department

BAP/cf



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#370-11

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(617) 796-1100

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E-mail  
swarren@newtonma.gov

November 3, 2011

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

11 NOV -3 A 12:08  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate the sum of \$72,988 from FY2011 Free Cash for the purpose of purchasing two (2) Fire Department replacement vehicles; a Ford Expedition utilized by the Fire Alarm Division and a fire mechanic utility/maintenance truck.

As you will see in the attached request per Chief Proia, both vehicles are beyond their useful life, unsafe, and will not pass inspection.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE



Bruce A. Proia  
Chief

**CITY OF NEWTON, MASSACHUSETTS  
FIRE DEPARTMENT HEADQUARTERS**

**1164 Centre Street, Newton Center, MA 02459-1584  
Chief: (617) 796-2210 Fire Prevention: (617) 796-2230  
FAX: (617) 796-2211 EMERGENCY: 911**



Setti D. Warren  
Mayor

November 3, 2011

Honorable Setti D. Warren, Mayor  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Mayor Warren:

I respectfully request a special appropriation to replace two (2) department vehicles; one is Ford Expedition utilized by the Fire Alarm Division and the other is the fire mechanics utility-maintenance truck.

The Ford Expedition is a former Shift Commander vehicle that was passed down to the Fire Alarm Division. It is a 1998 Ford with over 174,000 miles. The following repairs will have to be done in order for this vehicle to pass the Massachusetts inspection test. The transmission needs replacing; vehicle is burning oil and the body is rusting badly, especially through the driver's side rear panel. The vehicle needs a complete brake job. Windshield wiper linkage, dash cluster lighting is partial working and rain water is leaking into vehicle. Repairs and body work would cost approximately \$5,000.00. This vehicle will not pass inspection.

I would like to replace this with a used Ford Explorer bought at auction for an approximate cost of 20,000.

The utility-maintenance truck is a 1988 Ford with 85,500 miles assigned to the Mechanics' Division. The mechanics are responsible for the repair and maintenance of the fire fleet consisting of 32 vehicles. They make repairs at the mechanics shop, on the road, at fire houses and at fire scenes. Currently, this vehicle is unsafe to drive on the highway. Vehicle needs numerous repairs and will not pass inspection in its present state.

I would like to replace this with a new service truck in the amount of \$52,988.00. See quote attached.

Thank you very much for your consideration in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Proia".

Bruce A. Proia  
Chief of Department





November 3, 2011

Newton Fire Dept.  
Attn: Mike Sturniolo  
1164 Centre St.  
Newton, MA 02459

617 796 2210  
617 796 2211

[jilacroix@newtonma.gov](mailto:jilacroix@newtonma.gov)

Please find below a quote for a Ford F350 4x4 per the old Plymouth County Commissioners

Cooperative Contract# 09-10-11 M.G.L. c.30B applies to the procurement of all commodities quoted. Contract items have been collectively purchased pursuant to M.G.L. c.30B sec. 1c and M.G.L. c.7 sec 22B. The governmental body is responsible to determine the applicability of M.G.L. c.30B to off contract items, including but not limited to, off contract items that have already been properly procured under M.G.L. c.30B sec. 1c and M.G.L. c.7 sec. 22A (purchases from a vendor on contract with the Commonwealth), other contracts procured under M.G.L. c.30B sec. 1c and M.G.L. c.7 sec. 22B or any M.G.L. c. 30B contract between the vendor and the jurisdiction. All off contract items must be procured under M.G.L. c. 30B.

10-17 H1.04	2012 F350 4x4 Pickup	\$ 25,938.00
	Color: Red	included
	XL Trim, Regular Cab	included
	6.2L V8 Gas Engine	included
	Automatic Transmission	included
	All Season Tires	included
	Air Conditioning	included
	AM/FM Radio	included
	Class 3 Receiver Hitch	included
H11.14	Slide In Pintle Ball Combo	135.00
H5.01	8" Steel Utility Body	6,295.00
H5.07	54" High Raised Roof For 8' Enclosure With Dome Light	2,995.00
	Barn Doors With Glass	included
H5.14	Inside Compartment Lighting	485.00
H11.15	Trailer Plug, 6 Pin Round	150.00
H1.28	Factory Running Boards (Single Step)	325.00
H9.16	F250 Console	395.00
F11	Push Bumper	295.00
C1.05	Liberty LED Light Bar With Cencom Siren/Controller	1,925.00
C6.06	ES100 Speaker	195.00
C2.17	(6) 700 LED's, (2) Grill, (4) Rear Of Body	1,125.00
C14.12	(3) Auxillary 12V Outlets	40.00
H5.26	V Mac VR70 CFM Under Hood Air Compressor, Belt Driven	10,995.00

**Total Contract Price:**

**\$ 51,293.00**

**Non-Contract Items:**

(2) Curbside 16"x46" Side Access Door For Raised Roof  
Expanded Metal Rear Door Glass Protection

1,470.00  
225.00

**Total Purchase Price:**

**\$ 52,988.00**

Note: Added an Est 5% for new contract pricing

Sincerely,

*Anthony Mancuso*