

# **GRAFTON AFFORDABLE HOUSING TRUST**

## **COMPILATION MEMORANDUM**



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# **GRAFTON AFFORDABLE HOUSING TRUST**



# **OPERATIONS AND PROCEDURES MANUAL**

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# **GRAFTON AFFORDABLE HOUSING TRUST**

## **OPERATIONS AND PROCEDURES MANUAL**

### **I. ADMINISTRATION OF THE TRUST**

An Affordable Housing Trust (hereinafter "AHT") is considered a governmental body under a number of circumstances and must follow the general requirements which govern a municipality when buying, selling, leasing, renting and/or maintaining its real property and personal property and managing its finances, unless specifically authorized otherwise in accordance with G.L. c. 44 section 55C.

Additionally for purposes of the Open Meeting Law, G.L. c. 39, §§23A, 23B and 23C, the AHT is a governmental body and must adhere to the requirements thereof. As noted above, for purposes of G.L. c. 30B, the public procurement statute, the AHT must adhere to the requirements of buying, selling, leasing, renting and/or maintaining its real property and personal property. In addition, the AHT must follow the proper procedures for selling land which was designated park or conservation land as set forth in G.L. c. 40 §15A. Finally, when investing its cash, the AHT should follow the requirements of G.L. c. 44 §§, 54, 55 and 55B regarding investments by municipalities.

Below are the specific requirements with regard to the aforementioned aspects of the administration of an AHT. Those aspects with regard to the actual practices and procedures of running the operations of a trust, i.e., the election of officers, holding of meetings, etc. are not addressed in this memorandum but will be in a subsequent memorandum which focuses on the Trust, by-laws, and regulations, if any. Additionally, this memorandum assumes that the AHT was properly created by Town Meeting. A review of the adequacy of the Trust and Town Meeting action will also follow this memorandum and short comings, if any, will be addressed at that time.

### **II. BUYING, SELLING, LEASING AND HOLDING REAL PROPERTY**

#### **A. OVERVIEW**

The purchase, sale, lease or rental of real property by an AHT<sup>1</sup> is governed by G.L. c. 30B. An AHT must pay strict adherence to the provisions of Chapter 30B any

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<sup>1</sup> Gen. Laws ch. 44, § 55C, gives municipalities the power to create a Municipal Affordable Housing Trust Fund. Under G.L. c. 30B, a Municipal Housing Trust is considered a board within the municipality. G.L. c. 44, § 55C(j). In Section 2 of Chapter 30B, a "board" is included in the definition of "governmental body," therefore a Municipal Housing Trust is considered a "governmental body" under Chapter 30B. A Municipal Affordable Housing Trust is considered a "governmental body," defined by G.L. c. 39 § 23A as "every board, commission, committee or subcommittee of any district, city, region or town, however

time it engages in real estate transactions costing more than \$25,000, with the exception of the following types of transactions:

- Takings by eminent domain. See G.L. c. 79;
- Rental of residential property to qualified tenants by a housing authority or a community development authority. G.L. c. 30B, § 16(h);
- A contract to sell, lease, or acquire residential, institutional, industrial, or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of the real estate in accordance with a plan approved by the appropriate authority. G.L. c. 30B, § 1(b)(25);
- Redemption or auction of tax title property authorized under the provisions of G.L. c. 60;
- A transaction with state government. G.L. c. 30B, § 1(b)(4);
- An agreement between agencies, boards, commissions, authorities, departments, or public instrumentalities of one city or town. G.L. c. 30B, § 1(b)(7);
- The exercise of an option to purchase forest, agriculture, or recreation land for conservation purposes under G.L. c. 61, 61A, or 61B;
- Agreements and conveyances between the AHT and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B. G.L. c. 44 §55C(j)
- An acquisition of real property or an interest therein by a community preservation committee under G.L. c. 44B(5)(f); and
- Licenses or permits for limited use of real property.

According to the Inspector General's Office, Chapter 30B also does not apply to the renewal or extension of a lease for real property if the right to such renewal or extension and all the terms and conditions were established prior to the effective date of Chapter 30B.

## **B. ACQUIRING REAL PROPERTY THROUGH PURCHASE OR LEASE**

### **1. Acquiring at a Cost of More than \$25,000 (G.L. c. 30B, § 16)**

If an AHT determines that it must purchase or lease real property at a cost of more than \$25,000, it must advertise for properties. G.L. c. 30B, §16(c)(1). Even if the AHT has identified a suitable property, it must still undertake the advertising process. The advertising must be in the form of a Request for Proposal (RFP) which should include an explanation of how the AHT will select a proposal from those submitted. The RFP should also include at least the following information:

- The type and amount of property the AHT is looking for;

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elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.”

- The purpose for which the property will be used;
- Any special requirements, for example if the property cannot be adjacent to, or needs to be adjacent to, a particular type of property or use;
- Whether the AHT will be purchasing or leasing the property; and
- For a lease, the lease terms and the occupancy date, including any options to renew or extend the lease term.<sup>2</sup> An AHT may solicit proposals for different lease terms in the same RFP, provided the RFP states rules for choosing between the two terms. This is particularly helpful when the AHT wants to compare multiple options.

With respect to the evaluation criteria, the RFP should include the following:

- Criteria to evaluate the responsiveness. (For example, whether the proposed property fits the AHT's needs; whether the proposal is complete and contains all requested information; etc.);
- Criteria to evaluate the proposer with respect to his or her ability to follow through on the contract. (This may include evaluating the proposer's reputation, reliability, capacity, etc.);
- Criteria to evaluate the merits of the proposed properties. (For example, the location, physical characteristics, etc.);
- Criteria to evaluate the prices of the proposed properties. If the property is to be leased, the RFP should indicate whether the AHT will consider proposals with escalating rent over a period of years or whether the rent must remain static;
- Standard Forms – any forms required by the RFP should be included, in particular the non-collusion form required under Chapter 30B;<sup>3</sup> and
- If the AHT intends to select the lowest priced proposal, giving no regard to the merits of the property, it should indicate that in the RFP. Similarly, if the AHT intends to evaluate the merits of the properties, and is willing to pay a higher price for a better suited property, the RFP should so state.

In addition to the above, the RFP must contain any terms or conditions the AHT will require in the final agreement. This includes any statutory or local restrictions that apply to contracts for real property. It is recommended that the form of the lease be included.

The AHT must advertise for proposals in a newspaper with a general circulation, sufficient to notify the people in the affected locality. G.L. c. 30B, §16(d). The advertisement must appear at least once a week, for two consecutive weeks, the last of which must appear at least eight days before the proposal submission period opens. G.L. c. 30B, §16(d). The advertisement must indicate the geographic location in which the

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<sup>2</sup> While a municipality's extension of its lease of real property, prior to expiration of the lease term and pursuant to the terms of its lease agreement, is permitted without initiating a new bidding process, a purported "extension" of the term following expiration thereof requires compliance with G.L. c. 30B, § 16. See Lepore v. City of Lynn, 2005 WL 1140200 (Mass. Sup. Ct. 2005).

<sup>3</sup> The non-collusion form certifies that the bid was made in good faith, without collusion or fraud.

property should be located, the terms and conditions of the proposed lease or purchase, the time and place for submitting proposals, and where and when a copy of the RFP may be obtained. G.L. c. 30B, §16(d). The AHT may contact potential proposers to notify them of the availability of the RFP, but the AHT must act carefully so as to avoid the appearance of favoritism. If the proposed real estate transaction involves more than 2,500 square feet of property, an advertisement must also appear in the *Central Register*.<sup>4</sup> G.L. c. 30B, §16(d).

The RFP must be made available to all who request it on an equal basis. The AHT may charge a fee to cover the costs incurred in putting the RFP together, but all who request the RFP must be charged the same fee. Occasionally, there is a need to amend a RFP, therefore a record of everyone who requests a copy should be maintained with their contact information. In the event a RFP must be amended, the AHT must notify those who have already obtained a copy and send them the amendment. It is sometimes necessary to extend the time for proposal submission to allow proposers to address any amendment. The Office of the Inspector General, Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property 88-89 (2006) (hereinafter Procurement Manual).<sup>5</sup>

All proposals must be opened in public and at the time and place specified in the RFP. G.L. c. 30B, §16(f). Once opened, the proposals become public information. The proposals must be evaluated only according to the criteria outlined in the RFP. Every proposal must be considered, however if the RFP specified that the lowest proposal will be accepted, the AHT need only consider the proposal prices. Procurement Manual at 89. The AHT may also determine that it is not in its best interest to award a contract. The AHT may cancel the proposal process before or after the proposals are opened, up until it executes a contract. Mangano v. Town of Wilmington, 51 Mass. App. Ct. 857, 857 (2001).

Once the AHT has awarded a contract, it must publish the identity of the selected proposer in the *Central Register*. G.L. c. 30B, §16(f). In addition, in accordance with G.L. c. 7, § 40J, the selected proposer must disclose all beneficial interests in the real property acquired by the AHT in a filing to the Division of Capital Asset Management (DCAM).<sup>6</sup> Until the proposer makes this filing, the contract for the purchase or lease of real estate will not be valid. Procurement Manual at 90. If the contract is for the lease of real estate, an updated disclosure form must be filed within thirty-days of any change in beneficial interests within the lease term.

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<sup>4</sup> The *Central Register* is published by the Secretary of the Commonwealth. Submissions can be made by calling (617) 742-4822, or by mail at State Publications and Regulations, McCormack Building, Room 1613, One Ashburton Place, Boston, MA 02108.

<sup>5</sup> The Procurement Manual may be obtained from the Inspector General's Office or online at <http://www.mass.gov/legis/laws/mgl/30b-16.htm>.

<sup>6</sup> A form for this purpose may be obtained from DCAM. DCAM may be contacted at One Ashburton Place, Boston, MA 02108, (617) 727-4050.

For a period of six years from the date of final payment of any contract governed by Chapter 30B, the AHT must maintain a record of at least the following documents:

- The RFP and any amendments to it;
- The newspaper advertisement;
- All *Central Register* publications and notices;
- All proposals received during the proposal submission period;
- All materials used in the evaluation of the proposals;
- A copy of the disclosure of beneficial interests filed with DCAM; and
- The signed purchase and sale agreement or the lease agreement.

G.L. c. 30B, § 3.

2. Acquiring at a Cost of \$25,000 or Less (G.L. c. 30B, § 16(c)(1))

If an AHT determines that it must, or desires to, acquire property that will cost \$25,000 or less, there is no need to implement the RFP process. G.L. c. 30B, § 16(c)(1). Despite the absence of a formal process, it is advisable that the AHT undertake good business practices in selecting the desired property. All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17.

3. Acquiring Unique Property (G.L. c. 30B, § 16(e)(2))

If an AHT has determined that it needs to acquire a particular piece of real property because of some unique characteristic, it need not institute the RFP process. The AHT may not, however, avoid the RFP process simply because it is unaware of any other properties that fit its requirements. There must be something specific about the property that makes it desirable in order to avoid the RFP process. In lieu of the RFP process, the AHT must make a written determination indicating why the property satisfies the unique requirements of the AHT. G.L. c. 30B, § 16(e)(2). Notice of that determination must be published in the *Central Register* at least thirty days prior to entering into a binding contract to purchase the property.<sup>7</sup> G.L. c. 30B, § 16(e)(2). The notice must include the following:

- Written determination of uniqueness and the reason for that determination;
- The names of the parties with beneficial interest in the property;
- The location and size of the property; and
- The proposed purchase price or rental terms.

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<sup>7</sup> See Footnote 4.

In this case, the seller or lessor must still file a statement of beneficial interests with DCAM.<sup>8</sup> Procurement Manual at 90. All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17.

#### 4. Acquiring Property in Emergency Situations (G.L. c. 30B, § 16(e)(1))

In the event an AHT must acquire real property quickly and the time required to implement a RFP would endanger the health or safety of people or their property, the time required for the RFP may be shortened or waived. G.L. c. 30B, § 16(e)(1). However, it should be noted that the Inspector General looks very carefully at any declaration of emergency. It will not suffice that an advertisement was late or that the AHT really needs to meet a deadline or make a transaction occur. There must truly be an emergency which, if the transaction did not occur, would endanger the health or safety of people or property. If an AHT determines that it must make changes to the RFP process, it must publish notice in the *Central Register*<sup>9</sup> at the earliest opportunity. G.L. c. 30B, § 16(e)(1). The notice must state the reason for the emergency and, again, the seller or lessor must file a statement of beneficial interests with the DCAM before any contract is valid.<sup>10</sup> All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17.

### **C. DISPOSING OF PUBLIC PROPERTY THROUGH LEASE OR SALE**

#### 1. Overview

Gen. Laws ch. 44, § 55C gives and Article Fifth of the Declaration of Trust, gives the AHT the power to sell, exchange real property or execute leases therefore. General Laws ch. 30B, § 16 sets forth the procedure an AHT must follow in executing a lease or selling part or all of a building or land which the AHT owns.

Under G.L. c. 44, §55C, an AHT has the power to buy, sell, lease, and hold real property. Based on the language of that statute, the purpose for which an AHT is created and the treatment of an AHT as a “governmental body” under Chapter 30B, the AHT may determine that a portion of the property it holds should be sold or leased. That determination must be made through a vote by the trustees.<sup>11</sup>

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<sup>8</sup> See Footnote 6.

<sup>9</sup> See Footnote 4.

<sup>10</sup> See Footnote 6.

<sup>11</sup> Due to the newness of G.L. c. 44, § 55C, the Inspector General’s Office was unable to comment on whether the AHT must get approval from Town Meeting each time it disposes of property. Based on the statute, however, it is reasonable to consider the Town Meeting vote approving the AHT as granting the AHT the power to dispose of property without needing to go to the town each time. Please note however, the vote of the Grafton Town Meeting may be lacking and subsequent memoranda will address how to correct any insufficiency in the action at Town Meeting.

Once the determination has been made to sell the property or lease the property, the value of the disposition must be calculated based on market value. That is either the selling price of the property or the lease over the length of the lease term. For example, if the reasonable market value of the space is \$1,000 per month and the lease term is 36 months, the disposition value is \$36,000. To accurately calculate the disposition value, the AHT must employ “procedures customarily accepted by the appraising profession as valid.” Gen. Laws ch. 30B, § 16(b). With respect to rental rates, “the term ‘market rate’ has a generally understood and reasonably certain meaning: the rental rate the space would command on the open market. In other words, the ‘market rate’ is the amount a knowledgeable and willing lessor and lessee would [find acceptable].” Winchester Associates, Inc. v. Advanced Career Technologies, Inc., 66 Mass. App. Ct. 1103 (2006). The disposition value is purely based on the market value of the lease; it does not take into account what the town will actually receive in exchange for the leased property. The calculation of the disposition value is an important step in the process of leasing public real property because it determines what further steps the AHT must take in executing a lease contract.

2. Disposing of Property with a Value of More than \$25,000 (G.L. c. 30B, § 16(c)(2))

If the value of the disposition is more than \$25,000, the AHT must issue a RFP including the following information:

- Description of the property and the interest being disposed (including reference to a deed or survey if the property is being offered for sale);
- The terms of the disposition, including whether the property is for sale or lease (if the property is for lease, state the duration of the lease and whether any relevant utilities are included in the lease price);
- Any use restrictions placed on the property;<sup>12</sup>
- Criteria the town will use to evaluate the proposals receive;<sup>13</sup>
- Standard Forms (any forms required by the RFP should be included, in particular the non-collusion form required under Chapter 30B, Section 10);<sup>14</sup>
- Rules for submitting proposals including place of submission, duration of submission period and the form in which proposals should be submitted; and
- Terms and conditions of the contract.<sup>15</sup>

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<sup>12</sup> The Superior Court has stated that restrictions on the property need not appear in the RFP, however the IGO had taken the position that restrictions must be disclosed in the RFP. Kachikwu v. The Director & Public Facilities Dep't., 1996 WL 531784 (Mass. Sup. Ct. 1996)

<sup>13</sup> For more information on evaluation criteria, see the evaluation criteria listed under the section on acquiring property for more than \$25,000.

<sup>14</sup> The non-collusion form certifies that the bid was made in good faith, without collusion or fraud.

<sup>15</sup> Local and state laws should be consulted when establishing the terms and conditions of a lease contract. For example, under Gen. Laws ch. 30B, § 12(b), “[u]nless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or

The RFP must be made available to any and all who request it. The AHT may inform potential lessees of the availability of the RFP; however the AHT must do so in a non-biased manner. It is also recommended that the town keep a record of all who requested the RFP so that any amendments to that document can be sent anyone possessing the original.

The AHT must advertise for proposals in a newspaper with a circulation sufficient to advise the residents of the AHT or the affected locality. G.L. c. 30B, § 16(d). That advertisement is required to appear once a week for two consecutive weeks, the last of which must be at least eight days prior to the opening of the proposal submission period. G.L. c. 30B, § 16(d). The advertisement must indicate the location of the property, the terms and conditions of the proposed sale or lease, the time and place of submission of proposals and where and when copies of the RFP may be obtained. If the property consists of more than 2,500 square feet, an advertisement must also be published in the *Central Register* at least thirty days prior to the opening of the proposal submission period.<sup>16</sup> G.L. c. 30B, § 16(d).

After the proposal submission period closes, all proposals must be opened in public and evaluated only according to the criteria identified in the RFP. G.L. c. 30B, § 16(f). Once a purchaser or lessee is selected, their name and the amount of the transaction must be submitted to the *Central Register*. G.L. c. 30B, § 16(f). General Laws ch. 7, § 40J also requires the selected purchaser or lessee to submit a disclosure of beneficial interest in the real property leased by a public agency to the Division of Capital Asset Management before the contract is valid.<sup>17</sup>

After selecting a purchaser or lessee, the AHT must draft an agreement memorializing the contract, including the terms and conditions explained in the RFP. G.L. c. 30B, § 17. Under Chapter 30B, the AHT must retain a record of the transaction for a period of six years from the date of final payment of the contract, including the following documents:

- Declaration that the property is available for Disposition;
- RFP and any amendments to it;
- Public advertisement;
- Any notices placed in the *Central Register*;

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option.” In addition, G. L. c. 40 §3 allows Boards of Selectmen to enter into leases of real property for no more than ten (10) years without approval of Town Meeting. Please note again however, G.L. c. 44 §55C and the Trust are silent as to any specific limitation on the length of years of a lease, and as above, so long as the purpose of the Trust is being fulfilled, it is my opinion that longer lease terms are within the power of the Trustees. Please note, from a purely analytical aspect, since the statute is specific as to those other provisions of the General Laws which apply to AHTs, where no limitations are specified, the specific list of powers set forth in the statute and Trust prevail.

<sup>16</sup> See Footnote 4.

<sup>17</sup> See Footnote 6.

- All proposals received;
- Standard Forms, including the signed non-collusion forms submitted with the proposals;
- Evaluation materials;
- Copy of disclosure of beneficial interests; and
- Signed purchase and sale agreement or lease agreement.

G.L. c. 30B, § 3.

The AHT may decide to sell or lease the property for less than the calculated disposition value, but, in that event, it must publish a notice in the *Central Register*, stating its reasons for that decision and the difference between the actual rental price and the disposition value. G.L. c. 30B, § 17(g); Werfalli v. City of Somerville, 64 Mass. App. Ct. 1107 (2005) (City accepted a bid of \$163,700 over a bid of \$350,000 for a property because the proposed use in the lower bid was more in-line with the City's redevelopment plan).

The AHT may cancel the proposal submission process any time prior to executing a contract, should it decide that it is not in its best interest to enter into the proposed lease. Mangano v. Town of Wilmington, 51 Mass. App. Ct. 857, 857 (2001). That can even happen after all of the proposals have been opened, up until the AHT enters into a binding contract with a purchaser or lessee.

As with the acquisition of property, an AHT must maintain a record of the following for any property disposition governed by Chapter 30B:

- The RFP and any amendments to it;
- The newspaper advertisement;
- All *Central Register* publications and notices;
- All proposals received during the proposal submission period;
- All materials used in the evaluation of the proposals;
- A copy of the disclosure of beneficial interests filed with DCAM; and
- The signed purchase and sale agreement or the lease agreement.

G.L. c. 30B, § 3.

3. Disposing of Property with a Value of \$25,000 or Less (G.L. c. 30B, § 16(c)(2))

If, after declaring property available for disposition, the AHT determines that the disposition value of the property is \$25,000 or less, it need not institute the proposal submission process. If the proposal process is not required, it is advised that the AHT use good business practices in choosing a purchaser or lessee. This is obviously a much simpler process and possibly more desirable from an AHT's point of view, however, it is important to keep in mind that whether or not the proposal submission process is implemented is fully driven by the objective calculation of the disposition value. All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17.

#### 4. Disposing of Property in Emergency Situations (G.L. c. 30B, § 16(e)(1))

In emergency situations where an AHT determines that the time required for to advertisement for proposals would be detrimental to the health or safety of people or property, it may shorten or waive the advertisement period. If an AHT alters the advertisement period in any way, it must publish a notice in the *Central Register* indicating the reason for the emergency.<sup>18</sup> All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17. Please note the earlier caution concerning a declaration of a “true” emergency.

#### **D. ENLISTING THE HELP OF AN AGENT OR BROKER**

An AHT may contract with an agent or broker to aid in the acquisition or disposition of property. Procurement Manual at 88 and 102. The agent will show the property to interested purchasers or lessees if there is property for disposition and will encourage the submission of proposals. If the AHT is looking to acquire property, the agent will work to find suitable properties and will encourage the owners of those properties to submit proposals.

#### **E. OTHER PROPERTY TRANSACTIONS**

Chapter 30B and the RFP process also apply to the acquisition and disposition of other types of property interests. For example, mortgages, preservation restrictions, easements, and profits a pendre are all subject to the provisions of Chapter 30B and the same dollar amounts apply with respect to the need for a RFP.<sup>19</sup> Licenses or permits to use real property are not governed by Chapter 30B.<sup>20</sup> Chapter 30B does not allow swapping property between an AHT and a private party. The acquisition and disposition must be carried out as separate transactions and the RFP process must be followed according to the provisions of Chapter 30B. The transfer of property from one governmental agency or department to another within the same AHT is not governed by Chapter 30B. Property transactions between municipalities are governed by the provisions of Chapter 30B.

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<sup>18</sup> See Footnote 4.

<sup>19</sup> Profits a pendre are the right to enter upon land and remove something thereon, for example, the right to remove gravel from land. In Massachusetts, the right to remove standing wood or timber is not considered a profit a pendre.

<sup>20</sup> Licenses include the right to enter upon land for a particular activity, for example, the use of a ball field for a baseball game. At times a property interest will be mistakenly deemed a license, for example, the right to construct a cellular tower on public land. That type of interest is a lease and is governed by Chapter 30B. This may be of particular interest to an AHT which is trying to raise revenue to support the purposes of the Trust.

The Trust may decide to subsidize a development in exchange for the developer putting an affordable housing restriction on the development or for another similar reason. In most cases, this type of transaction would be governed by Chapter 30B and the Trust would have to advertise for proposals from developers or follow any other applicable procedure under Chapter 30B. Review criteria within the RFP could include items such as, number of units to be placed under deed restriction, length of deed restriction, or maximum sale/rental price of the unit. It is possible that this type of transaction could fall under the Unique Property Exception found in G.L. c. 30B, § 16(e)(2). If the Trust determines that it should subsidize a particular development for some unique reason, the Trust could avoid the RFP process as specified in G.L. c. 30B, § 16(e)(2).

### **III. BUYING AND SELLING PERSONAL PROPERTY**

#### **A. OVERVIEW**

The acquisition and disposition of personal property is governed by G.L. c. 30B, and include contracts to purchase, lease, rent, or sell, supplies or services. “Supplies” are defined as “all property, other than real property, including equipment, materials, and printing and further including services incidental to the delivery, conveyance and installation of such property.” G.L. c. 30B, § 2. “Services” are defined as “the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific and product other than reports.” G.L. c. 30B, § 2.<sup>21</sup> The procedure an AHT must follow in acquiring or disposing of supplies or services will depend on the dollar value of the contract.

Each Town must appoint a Chief Procurement Officer (CPO) to oversee the procurement of supplies and services and is ultimately responsible for all activities related those contracts for all municipal departments from beginning to end. The AHT should work with the CPO for the Town who will oversee the procurement of supplies and services for the AHT. Under Chapter 30B, the CPO has wide discretion to delegate his or her powers and duties, but any such delegation must be made in writing by the CPO and must be filed with the Massachusetts Inspector General’s Office (IGO).<sup>22</sup> Similarly, if the CPO amends or revokes a delegation, notice of that change must be filed with the IGO. Consequently, the Town CPO could delegate his/her duties as the CPO for the purposes of the AHT to a staff person of the AHT.

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<sup>21</sup> The term “Services” does not include employment agreements, collective bargaining agreements or grant agreements.

<sup>22</sup> A delegation runs with the position, not the individual, therefore there is no need to file a new delegation if a position changes hands. Some local government charters prohibit the delegation of CPO powers. The IGO recommends that all CPOs be certified by the Massachusetts Certified Public Purchasing Official (MCPPO) program. Information on that program can be found at [www.mass.gov/ig](http://www.mass.gov/ig).

## B. CONTRACTS FOR \$25,000 OR MORE (G.L. c. 30B, § 5)

### 1. Invitation for Bids

When entering into contracts for supplies or services with a value of \$25,000 or more, the AHT must employ a competitive sealed bid process. G.L. c. 30B, § 5(a). The first step in that process is for the AHT to issue an invitation for bids (IFB), which provides bidders with information on how to prepare and submit bids. The IFB should include the following:

- Purchase description or scope of services;
- Criteria to evaluate the responsiveness. (For example, whether the proposed property fit the AHT's needs; whether the proposal is complete and contains all requested information; etc.);
- Criteria to evaluate the vendor with respect to his or her ability to follow through on the contract. (This may include evaluating the bidder's reputation, reliability, capacity, etc.);
- Criteria to evaluate quality. (For example, bidder qualifications and training, quality of the goods or services being offered);
- Criteria to evaluate price. (For example, with a IFB process, the contract is awarded to the bidder offering the lowest price and the IFB should so state);
- If the IFB incorporates any documents by reference, it must state where bidders can obtain those documents;
- Standard Forms – any forms required by the IFB should be included, in particular the non-collusion form required under Chapter 30B;<sup>23</sup> and
- Submission requirements. (For example, where and when bids must be submitted, when the contract will be awarded, information on how to modify or withdraw bids, and any other pertinent information.)

G.L. c. 30B, § 5(b)-(c).

The AHT must publish notice of the IFB in a newspaper of general circulation within the jurisdiction, at least once within the two weeks prior to the time specified for bid submission. G.L. c. 30B, § 5(c)(5). A notice must also be posted for at least two weeks prior to the time specified for bid submission in a conspicuous place near the municipal offices. The public notice should include the following:

- Where, when and for how long the IFB may be obtained;
- A description of the supplies or services to be procured;
- A notice that the AHT had the right to reject any or all bids; and
- An identification of any board, officer, committee, or other body involved in evaluating the bids and awarding the contract.

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<sup>23</sup> The non-collusion form certifies that the bid was made in good faith, without collusion or fraud.

The IFBs must be made available on an equal basis to anyone who requests one. If a fee is charged in order to receive the IFB, the fee must be imposed on all bidders equally. If the value of the contract will be more than \$100,000, a notice must also be published in the *Goods and Services Bulletin* published by the Secretary of the Commonwealth.<sup>24</sup> Procurement Manual at 37. The AHT may also contact vendors to notify them of the IFB but he or she should be careful to avoid favoritism or the appearance thereof.

The AHT should keep a record of all sealed bids received during the submission process. Bids received after the submission period closes should not be accepted and should be returned to the potential vender. G.L. c. 30B, § 5. The same is true of bid modifications, and amendments. All bids must be opened in a public meeting or in the presence of one or more witnesses. G.L. c. 30B, § 5(d). If the bids are opened at a public meeting, the names of the bidders and the amounts of the bids must be recorded in the minutes. G.L. c. 30B, § 5(d). If the bids are opened in front of witnesses, the CPO and the witnesses must sign a statement under the pains and penalties of perjury listing the names of the bidders and the amounts of the bids and certifying that all bidders have been accounted for. G.L. c. 30B, § 5(d).

When evaluating the bids, the AHT must use only the criteria explained in the IFB and **the winning bid will be the one with the lowest price** for the desired supplies or services. G.L. c. 30B, § 5(e). It is possible that the evaluation of the bids results in a tie. The IGO recommends that each AHT adopt a policy for handling tied situations. If an AHT does institute such a policy, it should include a statement of the policy in the IFB.

When a bid has been chosen, notice of the award decision must be given to the selected bidder within the time specified in the IFB. G.L. c. 30B, § 5(g). Depending on the nature of the contract, the award may be subject to approval of any number of individuals or boards, for example the mayor, school committee, etc. An AHT may cancel the bidding process in a writing stating the reasons for such cancellation. That is true even after the bids are opened, up until the time a contract is executed.

All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17. A record of all documents required by Chapter 30B must be maintained for six years from the date of the final payment under the contract. The record should include the following:

- The IFB, including any amendments;
- The public notice and advertisements;
- The notice published in the *Goods and Services Bulletin* if the contract value is \$100,000 or more;

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<sup>24</sup>The Secretary of the Commonwealth can be contacted at (617) 742-4822, or by mail at State Publications and Regulations, McCormack Building, Room 1613, One Ashburton Place, Boston, MA 02108. The IGO recommends publishing the notice in the *Goods and Services Bulletin* at least two weeks before bids are due.

- The record of bid opening, either the minutes from the public meeting or the signed statement by the CPO and any witnesses;
- All bids received, including the non-collusion statement signed by each bidder;
- Any bid corrections, modifications, or withdrawals received;
- Any notices of bid rejections or cancellations;
- The notice of reward; and
- The executed contract.

G.L. c. 30B, § 3.

## 2. Request for Proposal Process (G.L. c. 30B, § 6(a))

An AHT may determine that it is in its best interest to employ a Request for Proposal (RFP) process instead of the IFB process.<sup>25</sup> G.L. c. 30B, § 6(a). Under Chapter 30B, only a CPO or other individual delegated with the authority of the CPO can make procurements of supplies and services using the RFP process. **The benefit of employing the RFP process is that the proposals can be evaluated on their merits instead of the strict lowest price criteria required by the IFB process.** If an AHT, through the CPO, decides to issue a RFP with respect to supplies and services contracts, he or she must detail the reasons for that decision in writing, and follow the process explained below and it must document that decision in writing. Procurement Manual at 46.

The CPO must first prepare the RFP which should include the following:

- Purchase description or scope of services;
- Plan of Services, if any. (This explains how the bidder will fulfill the contract);
- Criteria to evaluate the responsiveness. (For example, whether the proposed property fit the AHT's needs; whether the proposal is complete and contains all requested information; etc.);
- Criteria to evaluate the bidder with respect to his or her ability to follow through on the contract. (This may include evaluating the bidder's reputation, reliability, capacity, etc.);
- Criteria to evaluate quality. (For example, bidder qualifications and training, quality of the goods or services being offered);
- Criteria to evaluate price. (For example, how the prices will be compared);
- All comparative criteria must be explained. (A four level rating system must be used for any comparative analysis: "highly advantageous," "advantageous," "not advantageous," and "unacceptable." Each level should be defined in the RFP);
- If the RFP incorporates any documents by reference, it must state where bidders can obtain those documents;

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<sup>25</sup> Contracts for school bus transportation must be made through the IFB process.

- Standard Forms – any forms required by the RFP should be included, in particular the non-collusion form required under Chapter 30B;<sup>26</sup>
- Submission requirements. (For example, where and when bids must be submitted, when the contract will be awarded, information on how to modify or withdraw bids, and any other pertinent information);
- Price and Non-Price Proposals. (The RFP must instruct proposes to submit separate sealed proposals, one containing the price and the other strictly containing technical information); and
- Contract terms and conditions.

G.L. c. 30B, § 6(b)-(c).

The CPO must advertise for proposals in a newspaper with a general circulation, sufficient to notify the people in the affected locality. G.L. c. 30B, § 5(c). The advertisement must appear at least once a week, for two consecutive weeks, the last of which must appear at least eight days before the proposal submission period opens. G.L. c. 30B, § 5(c). The advertisement must indicate the geographic location in which the property should be located, the terms and conditions of the proposed lease or purchase, the time and place for submitting proposals, and where and when a copy of the RFP may be obtained. G.L. c. 30B, § 5(c). The CPO may contact potential proposers to notify them of the availability of the RFP, but the CPO must act carefully so as to avoid the appearance of favoritism. If the contract value will be \$100,000 or more, a notice must be published in the *Goods and Services Bulletin*.<sup>27</sup> Procurement Manual at 54.

The RFP must be made available to all who request it on an equal basis. The CPO may charge a fee to cover the costs incurred in assembling the RFP, but all who request the RFP must be charged the same fee. G.L. c. 30B, § 6 (b)(3). Occasionally, there is a need to amend a RFP, therefore a record of everyone who requests a copy should be maintained with their contact information. In the event a RFP must be amended, the CPO must notify those who have already obtained a copy and send them the amendment. It is sometimes necessary to extend the time for proposal submission to allow proposers to address any amendment.

An odd number of individuals should be chosen to evaluate the non-price proposals. Those individuals may be Trustees, AHT employees, volunteers, and/or independent contractors, chosen because of their expertise in a particular subject. The proposals may not be opened in public. G.L. c. 30B, § 6(d). The contents of the proposals must be kept confidential until the time for acceptance stated in the RFP or until the evaluation process is complete, whichever occurs first. The non-price proposals must be opened at the time specified in the RFP and the price proposals may be opened at any time thereafter. It is important that the price proposals are not disclosed to the individuals evaluating the non-price proposals. The individuals chosen must make

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<sup>26</sup> The non-collusion form certifies that the bid was made in good faith, without collusion or fraud.

<sup>27</sup> See Footnote 24.

written evaluations of each non-price proposal using the four tiered analysis mentioned above (“highly advantageous,” “advantageous,” “not advantageous,” “unacceptable”) for each comparative evaluation criterion listed in the RFP. G.L. c. 30B, § 6(e). After the individual analyses are complete, the evaluators must assign each proposal a final composite rating using the same four tiered rating system. G.L. c. 30B, § 6(e). The evaluators should include as much information in their analyses so that the CPO is fully informed when awarding a contract.

When opened, the price proposals must be evaluated according to the criteria appearing in the RFP. The CPO must then weigh the price proposals and non-price proposals to determine the most advantageous proposal. The contract must be rewarded within the time specified in the RFP. If the contract is not awarded to the proposal with the lowest price, the CPO must prepare a written explanation of how that decision was reached. G.L. c. 30B, § 6(h).

All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17. For a period of six years from the date of final payment of any contract governed by Chapter 30B, the CPO must maintain a record of at least the following documents:

- Written explanation of why the RFP process was used;
- The RFP and any amendments to it;
- All public advertisements;
- *Goods and Services Bulletin* notice, if contract is for \$100,000 or more;
- Record of all proposals received during the proposal submission period;
- All proposals received including the signed non-collusion statements;
- Any proposal modifications, corrections or withdrawals;
- Any notices of proposal rejections or cancellations;
- All materials used in the evaluation of the proposals, including the non-price proposal evaluations
- Written explanation for the contract award if it went to other than the lowest priced proposal; and
- The executed contract.

G.L. c. 30B, § 3

### **C. CONTRACTS BETWEEN \$5,000 AND \$24,999 (G.L. c. 30B, § 4)**

In order to enter into contracts for supplies and services between \$5,000 and \$24,999 an AHT must request prices from at least three vendors. G.L. c. 30B, § 4(a). The requests can be either oral or in writing. The AHT may choose which vendors to solicit quotes from based on past dealings, reputation or any other criteria it deems important. Chapter 30B only requires that three quotes be solicited, it is not necessary to actually receive three quotes. According to Chapter 30B, an AHT must record the following:

- The names and addresses of all persons contacted for quotes;

- The names of all persons that submitted quotes; and
- The date and amount of each quote.

After all quotes are received, the AHT should determine the best quote, based on price, quality of the supplies or services and the ability of the vendor to fulfill the contract. G.L. c. 30B, § 4(b). All contracts for \$5,000 or more must be executed in writing. An AHT may cancel a request for a quote with a writing that should be kept on file. The solicited vendors should also be informed that the quote submission process has been terminated.

All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 17. When a contract has been executed, the following records must be retained for a period of six years for the date of the final payment under the contract:

- The names and addresses of all vendors from which quotes were sought;
- The date and amount of each quote; and
- The executed contract and any contract amendments.

#### **D. CONTRACTS FOR LESS THAN \$5,000**

When entering into contracts for less than \$5,000, an AHT must use good business practices. The law does not mandate a particular process with respect to these contracts, but the IGO recommends periodically soliciting quotes or price lists to verify that the AHT is paying favorable prices.

#### **E. SPECIAL CONTRACTS FOR SUPPLIES AND SERVICES AND CONTRACT INCREASES**

##### 1. Sole-Source Procurements (G.L. c. 30B, § 7)

Sole-source procurement is when an AHT purchases supplies or services without advertisement or competition of any kind. These can be used for supplies and services for under \$25,000 and the AHT must have determined, in writing, that there is only one practicable source for those supplies or services. All contracts for \$5,000 or more must be in writing. G.L. c. 30B, § 7. Sole-source procurements may not be used for contracts of \$25,000 with the following exceptions:

- Noncompetitive purchases may be made for educational materials, library books and software maintenance; and
- Purchases of utilities from regulated industries may be made without competition.

G.L. c. 30B, § 7(a). A record of every sole-source procurement must be kept including the name and address of the vendor, the type of contract awarded, the supplies or services procured, and the basis for the determination that a sole-source procurement was reasonable. G.L. c. 30B, § 7(b).

## 2. Emergency Procurements (G. L. c. 30B, § 8)

If a situation arises in which the time required to follow the provisions of Chapter 30B would endanger the health, or safety of people or their property, an AHT may enter into necessary contracts without following the Chapter 30B processes. G.L. c. 30B, § 8. The AHT must follow the Chapter 30B procedures to the extent possible. That could mean shortening the advertising period for FIBs and RFPs or foregoing the procedures completely. The AHT must maintain a record of all emergency procurements, including the following:

- The basis for determining that an emergency exists;
- The name of the vendor;
- The amount and type of contract; and
- A list of the supplies or services purchased under the contract

The record must also be submitted as soon as possible to the *Goods and Services Bulletin* for publication.<sup>28</sup> Procurement Manual at 68-69.

## 3. Exercising Options to Renew, Extend, or Purchase (G.L. c. 30B, § 12)

Options to renew, extend, or purchase may only be exercised if the following conditions are met:

- The option terms were included in the original solicitation;
- The option terms were incorporated into the executed contract; and
- The contract provides the AHT with sole discretion to exercise the option.

Prior to exercising any option, the AHT must determine that it more advantageous to exercise the option than it is to enter into a new contract. G.L. c. 30B, § 12(e). The research done to make that determination must be documented in writing.

## 4. Contract Increases (G.L. c. 30B, § 12)

The quantity of supplies or services specified in a contract may be increased if the following conditions are met:

- The unit prices remain the same or less;
- The CPO documents in writing that an increase is needed to fulfill the actual needs of the AHT and is more economical and practical than awarding another contract to meet the need;
- The parties agree to the increase in writing; and
- The increase in quantity does not exceed 25% of the *total* contract price.<sup>29</sup>

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<sup>28</sup> See Footnote 24.

G.L. c. 30B, § 12.

## F. DISPOSAL OF SURPLUS SUPPLIES<sup>30</sup>

### 1. Sales with a Value of Less than \$5,000 (G.L. c. 30B, § 15(f))

An AHT may dispose of excess supplies with an estimated value of less than \$5,000 in any manner established by the AHT. Before any such disposition can take place, the AHT must adopt written procedures setting forth how the disposition should take place. The procedures could include such things as holding a silent auction and/or advertising the surplus supplies in a newspaper. Once adopted, the procedures should be distributed to all municipal departments.

### 2. Sales with a Value of \$5,000 or More

An AHT may dispose of excess supplies with an estimated value of \$5,000 or more in one of the following three ways:

- Sealed bids;
- Public auction;
- Charitable donation; or
- Established market.<sup>31</sup>

G.L. c. 30B, § 15(b)

#### Sale by Soliciting Sealed Bid or Auction (G.L. c. 30B, § 5(c))

In either of these methods of disposition, the AHT must prepare a notice of sale including the following information:

- A complete description of the supplies being offered;
- When, where, and how the supplies can be inspected by potential bidders prior to the bid opening or the auction;

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<sup>29</sup> If the contract is for multiple types of supplies or services and the municipality needs to increase the quantity of only one type of supply or service, the increase cannot be more than 25% of the total contract price. Contracts for the purchase of fuel, road salt, and other similar ice and snow management supplies are not subject to the 25% limitation for increases; however any increase in those types of supplies must still meet the three other conditions listed above.

<sup>30</sup> While it is unlikely the AHT will need to employ this method of sale in the short term, for planning purposes we have included an overview of the process.

<sup>31</sup> In an established market, goods are sold in wholesale lots, at prices set by open competition. This will rarely be an option for municipalities.

- All terms and conditions of the sale (this could include such things as minimum bid amount, form of payment accepted, deposit requirements prior to bidding at auction, and when the supplies must be removed);
- Where and when to submit bids or the location, date and time of the auction;
- The rules of conduct if there will be a public auction;
- A statement of how the contract will be awarded (based on highest price, or other criteria); and
- A statement that the AHT reserves the right to reject any and all bids.

G.L. c. 30B, § 5(b)-(c).

As required under Chapter 30B, all bids must be accompanied by a signed non-collusion form by the bidder.

The AHT must advertise the sale at least two weeks prior to the bid opening or the date of the auction. Notice of the sale must be posted in a conspicuous place near the municipal offices and it must appear at least once in a newspaper of general circulation. G.L. c. 30B, § 5(b). If the supplies have an estimated value of \$100,000 or more, a notice must also be published in the *Goods and Services Bulletin*, published by the Secretary of the Commonwealth.<sup>32</sup> Procurement Manual at 73.

If the AHT has decided to solicit sealed bids, the bids must be opened at a public meeting. If the AHT opts to hold an auction, the auction must be held in public and must be conducted in a manner conforming to the rules explained in the notice of sale. G.L. c. 30B, §15. According to the IGO, auctions may be held online provided the AHT complies with all advertising requirements. In the case of an online auction, inspection of the supplies may be accomplished electronically by photograph, but it is recommended that the supplies also be available for in-person inspection. Procurement Manual at 74.

## 2. Charitable Donations

An AHT may dispose of excess supplies at an amount less than fair market value to any organization with an IRS tax exempt status, as a charitable donation. Any such donation must first be approved by a majority of the AHT's Trustees. Procurement Manual at 75.

## IV. MANAGING REAL PROPERTY

Any contracts entered into for the maintenance of public property, for example the landscaping at an affordable housing facility, is governed by the provisions of Chapter 30B as illustrated above. The maintenance of a public building, as opposed to

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<sup>32</sup> See Footnote 24..

the grounds around same, however is governed by Gen. Laws ch. 149<sup>33</sup>. All maintenance contracts must include the following provisions:

- Wages and employment conditions;
- Payment bonds. (Gen. Laws ch. 149, § 29 requires a payment bond be posted by the contractor in the amount of at least 50% of the contract price for projects over \$2,000); and
- Any required OSHA training certifications for employees of contracts for more than \$10,000.

#### **A. CONTRACTS FOR LESS THAN \$10,000**

When entering into a contract for the maintenance of a public building at a cost of less than \$10,000, an AHT must seek written quotes from at least three individuals who perform the type of work sought and award the contract to the lowest priced quote. G.L. c. 149, § 44A(2)(A). The AHT must keep a record of the names and addresses of those individuals who were asked to submit a quote, the names and addresses of those who submitted quotes, and the date and amount of each quote submitted. G.L. c. 149, § 44A(2)(A).

#### **B. CONTRACTS BETWEEN \$10,000 AND \$25,000**

When entering into a contract for the maintenance of a public building for a cost of \$10,000 to \$25,000, an AHT must publish notice of the contract in an effort to solicit written responses from individuals who perform the type of work sought. G.L. c. 149, § 44A(2)(B). The notice may be published either in accordance with Chapter 30B, as illustrated above, or in accordance with Gen. Laws ch. 30, § 39M. G.L. c. 149, § 44A(2)(B).

#### **C. CONTRACTS BETWEEN \$25,000 AND \$100,000**

When entering into a contract for the maintenance of a public building for a cost of between \$25,000 and \$100,000, AHT must award the contract the lowest eligible bidder in accordance with the procedure set out in Gen. Laws ch. 30, § 39M. G.L. c. 149, § 44a(2)(B). Section 39M requires that publication be made in the *Central Register*<sup>34</sup> and defines “lowest responsible and eligible bidder” to mean the bidder:

- Whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work;
- Who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;

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<sup>33</sup> Attached in the Appendix is a chart provided by the Inspector General’s Office which will assist the AHT in determining which type of procurement process must be used at any given time.

<sup>34</sup> See Footnote 4.

- Who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee;
- Who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and
- Who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149.

G.L. c. 30, § 39M(c).

#### **D. CONTRACTS FOR MORE THAN \$100,000**

When entering into a contract for more than \$100,000 for the maintenance of a public building a AHT must award the contract to the lowest responsible and eligible bidder in accordance with the procedures in Gen. Laws ch. 149, §§ 44A-44H.

### **V. INVESTMENT AND EXPENDITURE OF TRUST FUNDS, FINANCIAL REPORTING**

#### **A. INVESTMENT AND EXPENDITURE OF TRUST FUNDS**

Investment and expenditure of AHT funds are governed by the statute, town by-laws and the Trust document. In accordance with G.L. c. 44 §55C, and the Trust itself, the AHT has the power to borrow money on terms and conditions it deems advisable, to invest funds and to accept and receive gifts. Other than the broad language of the statute and Trust, there are no specific limitations on investments and borrowing. However, given that the AHT will hold “public” funds or “trust” funds, and given that while they are not a municipality, they may be treated as such when it comes to reviewing investments and banking operations, it is therefore advisable to follow the general requirements of the General Laws with respect to investment and holding of trust assets. As a result, the AHT is advised that, except for those funds required to be kept liquid for purposes of distribution, that the investments be productively invested at the “highest possible rate reasonably available, taking into account safety, liquidity, and yield.”<sup>35</sup>

Specifically, G.L. c. 44 §54 governs the investment of trust funds for a municipality. The statute provides,

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<sup>35</sup> This standard is a compilation of the statutory requirements and is the standard set forth in the Municipal Collector and Treasurer manual. I have attached a selection relevant to cash management in the Appendix. Please further note, if the Town Treasurer is currently holding the AHT funds in a simple savings account, the AHT has the right to seek an investment manager to invest the funds in accordance with the statute which could be more productive than the current investment by the Treasurer. Please note, should the AHT seek an investment manager, the AHT must follow G.L. c. 30B in procuring those services.

Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor thereof, shall be placed at interest in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invested by cities or towns in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine, or in paid-up shares and accounts of and in co-operative banks, or in shares of savings and loan associations or in shares or savings deposits of federal savings and loan associations doing business in the commonwealth to an amount not exceeding one hundred thousand dollars, or in bonds or notes which are legal investments for savings banks. (emphasis added).

Essentially, Trust funds must be maintained in interest bearing accounts separate from general municipal funds. Commissioners of Woburn Cemetery v. Treasurer of Woburn, 319 Mass. 86, 89-90 (1946) (The income received from a savings account maintained for money paid to a city to be held in trust for the maintenance of a cemetery, may not be commingled with the general fund for that city.). With respect to Trust funds in excess of two hundred and fifty thousand dollars, there are more investment options. General Laws chapter 44 §54 provides that;

[c]ities and towns having such funds in the custody of the treasurer in an aggregate amount in excess of two hundred and fifty thousand dollars may also invest such funds in securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that not more than fifteen per cent of any such trust funds shall be invested in bank stocks and insurance company stocks, nor shall more than one and one-half per cent of such funds be invested in the stock of any one bank or insurance company. (emphasis added).

Additionally, as to the investment of public funds, G. L. c. 44 §55B provides:

All moneys held in the name of a city, town, district or regional school district or any other account under the jurisdiction of a city, town, district, or regional school district or officer thereof, which are not required to be kept liquid for purposes of distribution, shall be invested in such a manner as to require the payment of interest on the money at the highest possible rate reasonably available, taking account of safety liquidity and yield. All officers of a city, town district or regional school district who control the investment of such funds shall invest them prudently, consistent with the provisions of sections fifty-four and fifty-five and, if the funds are the result of gift or grant or bequest, the terms of such gift or grant

or bequest, so as to accrue the highest amount of interest reasonably available on such funds taking account of safety, liquidity and yield. The provisions of section sixty-two shall not apply to this section. (emphasis added)

Finally, G. L. c. 44 §55 sets forth certain limitations on the amount of the AHT funds any one institution holds and provides that;

A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit....A treasurer of a city, town, district or regional school district may invest such portion of revenue cash as he shall deem not required to pay expenses until such cash is available and all or any part of the proceeds from the issue of bonds or notes, prior to their application to the payment of liabilities incurred for the purposes for which the bonds or notes were authorized, in term deposits or certificates of deposit, in trust companies, national banks, savings banks, banking companies or cooperative banks, or in obligations issued or unconditionally guaranteed by the United States government or any agency thereof and having a maturity from date of purchase of one year or less, or in United States government securities or securities of United States government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed ninety days or in shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with Section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least one nationally recognized statistical rating organization and the purchase price of shares of beneficial interest purchased pursuant to this section shall not include any commission that these companies may charge, or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine; provided, however, that no temporary notes in anticipation of revenue shall be issued under section four as long as any revenue cash, exclusive of revenue

sharing or other revenue cash the use of which is restricted to purposes other than current maintenance expenses, remain so invested. (emphasis added).

This statute attempts to limit the risk involved with investing public funds. Because there is always some risk associated with investments, the Trust should be aware of where Trust funds have been invested and make an attempt to diversify when possible.

As to the expenditure of AHT funds, the Trust sets forth in Article Second, Purpose, that the AHT may use its Trust property, which would include cash as well as real and other personal property, in such a manner as the Trustees shall deem most appropriate to carry out the purpose of the Trust, namely, to create and preserve affordable housing in the Town of Grafton for the benefit of low and moderate income households. In doing so, as Trustees, the Trustees should act in a fiduciary manner that is with utmost good faith and loyalty to the Trust, and with reasonable care. The Trustees, in accordance with the Trust are permitted to obtain advice from counsel, accountants or other advisors, in order that they may make the best determinations for the Trust. See Article Fifth.

The Trustees of the AHT will be well served by following the investment and cash management requirements which guide municipalities and by acting in a manner consistent with the purposes of the Trust when selling or acquiring property and or carrying our the purposes of the Trust.

## **B. FINANCIAL REPORTING REQUIREMENTS**

Article Ninth of the Trust requires that the Trust accounts, records and books be audited annually by an independent auditor. Additionally, the Trust is required to provide that audit to the Town. Finally, the Trust is required to provide to the Town an annual report or Trust activities. I have attached in the Appendix a sample form for reporting to the Town annually on the activities of the Trust.

## **VI COMPLIANCE WITH THE OPEN MEETING LAW**

### **A. OVERVIEW**

In accordance with the Trust, Article Fourth and G.L. c. 44 § 55C((i) the trust is considered a governmental body for purposes of the Open Meeting Law, as set forth in G.L. c. 39 §§23A, 23B and 23C. In general, the Open Meeting Law requires all meetings of a quorum of the trust, or any subcommittee thereof, to be open to the public, except in very specific instances. The public must be given at least 48 hours notice of the meeting. Minutes of the meeting are public documents, unless they are the product of an executive session and then they may be held from public view until the information about which the executive session was held becomes public.

The Open Meeting Law, Massachusetts General Laws Chapter 39, Sections 23A and B, provides that all meetings of a governmental body shall be open to the public and that any person is permitted to attend any meeting, with the exception of executive sessions. The statute authorizes nine purposes for executive sessions that are closed to the public. The law also mandates that, except in an emergency, notice of all meetings of governmental bodies must be publicly posted 48-hours in advance and that meeting minutes must be maintained and made available to the public.

## **B. MEETINGS**

As noted above the underlying premise of the Open Meeting Law is that all meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by the statute. G.L. c. 39 §23B. Additionally, no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided in the statute. Id.

## **C. NOTICE**

The AHT is required to provide notice of every meeting of the AHT which said notice must be filed with Town Clerk. The notice must be publicly posted in the office of the clerk or other official posting place of the town at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the meeting. The notice must include the date, time, and place of the meeting.

In the event of an emergency, the 48 hour notice requirements do not have to be met. However, the emergency must be of such significance, like destruction of a building over which the AHT has control, that harm to persons or property would result if compliance with the posting requirements were met.

## **D. MINUTES**

The AHT must maintain accurate records of its meetings, setting forth the date, time, place, members present or absent, and action taken at each meeting, including executive sessions. These minutes are merely the reflection of the action of the meeting and not a verbatim transcript of the meeting. The records of each meeting are public records and must be available to the public. However, the records of any executive session can remain secret as long as publication of the minutes might defeat the lawful purposes of the executive session after which time the minutes must be released.

## **E. EXECUTIVE SESSIONS**

The AHT may enter into executive session so long as they do so only as specifically set forth in the statute. The law specifies that no executive session shall be held until:

1. The governmental body first convenes in an open session;

2. A majority of the members have voted to go into executive session by a recorded roll call vote;
3. The presiding officer has stated the purpose of the executive session, and
4. The presiding officer has stated before going into executive session if the governmental body will reconvene after the executive session.

An executive session may ONLY be held for the following reasons;

1. To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual. Professional competence must be discussed in an open session.
2. To consider the discipline or dismissal of, or to hear complaints or charges brought against a public officer, employee, staff member or individual.
3. To discuss strategy relating to collective bargaining or litigation (if the lawsuit is actual or imminent) when an open meeting would have a detrimental effect on the bargaining or litigating position of the governmental body. They are also permitted to conduct strategy sessions in preparation for negotiations with non-union personnel, and to conduct collective bargaining sessions or contract negotiations with non-union personnel.
4. To discuss deployment of security personnel or devices;
5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints;
6. To consider the purchase, exchange, lease, or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body with a person, firm, or corporation;
7. To comply with the provisions of any general or specific law or federal grant-in-aid requirements;
8. To consider and interview applicants for employment by a preliminary screening committee or sub-committee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of the preliminary screening or a subcommittee appointed by a governmental body to consider and interview applicants who have passed a prior preliminary screening.
9. To meet or confer with a mediator with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that:

- a. Any decision to participate in mediation shall be made in open meeting session and the parties, issues involved, and purpose of the mediation shall be disclosed, and
- b. No action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting with proper notice.

If the AHT were to meet in executive session for the purposes of 1 or 2 above then the individual who is the subject of an executive session must be notified in writing by the governmental body at least 48 hours prior to the executive session. This notification can be waived upon agreement by the parties; however, we would suggest that any waiver of the 48 hour notice rule should be in writing.

The person subject to executive session under numbers 1 and 2 above may avail his/herself to the following:

- a. To be present at the executive session during discussions or considerations involving that individual;
- b. To have an attorney or representative present for the purpose of advising that individual, but not for the purpose of active participation;
- c. To speak in his or her own behalf.

Under 1 and 2 above, the governmental body must hold an open meeting if the individual involved requests that the meeting be open to the public.

It is most likely that the purpose, if any, of the need for the AHT to call an executive session would be to determine or discuss the purchase, lease and/or value of real estate as noted in 6 above. If such an executive session is required, then utmost care must be given to follow the proper procedures of calling and holding an executive session. Additionally, the Trustees, or sub-committee members must be reminded that they are not free to discuss the issues addressed in executive session until such time as the matter about which was the subject of executive session is no longer needed to be private. Additionally, only the members of the Trustees, and their consultants and staff may participate in the executive session. Certainly the "opposing party" or entity with whom an agreement for the purchase or sale of real estate is trying to be reached may NOT participate otherwise their participation would defeat the purpose of the executive session.

**GRAFTON AFFORDABLE HOUSING TRUST  
OPERATIONS AND PROCEDURES MANUAL**

**APPENDIX**

## **APPENDIX A**



# The Commonwealth of Massachusetts

## Office of the Inspector General

GREGORY W. SULLIVAN  
INSPECTOR GENERAL

JOHN W. MCCORMACK  
STATE OFFICE BUILDING  
ONE ASHBURTON PLACE  
ROOM 1311  
BOSTON, MA 02108  
TEL (617) 727-8140  
FAX (617) 723-2334

Dear Local Official:

The following charts were created by the Office of the Inspector General for local officials to use as a quick reference guide on public procurement procedures that must be followed pursuant to the Massachusetts General Laws. Your local rules may establish stricter or additional requirements that you must follow. Contact your chief procurement officer (CPO) or legal counsel for advice on your local rules and procurement procedures.

The charts highlight particular areas which may require compliance depending on the cost or the nature of your procurement. For example, the charts highlight, where applicable, the requirement for a ten-hour course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA). Pursuant to M.G.L. c.30, §39S, any person submitting a bid for, or signing a contract to work on, a public building or public works project estimated to cost more than \$10,000, must certify under the pains and penalties of perjury that he or she is able to furnish labor in harmony with all other elements of labor employed in the work and that all employees employed on the worksite, or in work subject to the bid, have successfully completed at least ten hours of OSHA approved training. The charts are meant to provide a general overview of the principal public procurement statutes, and are not a substitute for the advice of legal counsel.

Any suggestions for the charts or questions concerning M.G.L. c.30B may be directed to this Office by calling 617.722.8838. Questions concerning M.G.L. c.149, M.G.L. c.30, §39M, and M.G.L. c.7 may be directed to the Office of the Attorney General by calling 617.727.2200 or your legal counsel.

Prevailing wage rate sheets may be requested online at <http://www.mass.gov/dos/pwrequest> or by calling the Division of Occupational Safety at 617.727.3492.

*Central Register* advertisements may be submitted online at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Tuesday.

*Goods and Services Bulletin* advertisements may be submitted online at <http://www.sec.state.ma.us/sprpublicforms/GSSubmissionform.aspx> to the Secretary of the Commonwealth. The submission deadline is 4:00 pm on Wednesday.

Sincerely,

A handwritten signature in cursive script that reads "Gregory W. Sullivan".

Gregory W. Sullivan  
Inspector General

M.G.L. c. 149

**BUILDING CONSTRUCTION CONTRACTS**

Estimated Contract Amount	Under \$10,000	\$10,000 to \$24,999	\$25,000 to \$100,000	Over \$100,000	Over \$10,000,000
<b>Procurement Procedure</b>	Solicit three written price quotes.	Solicit written price quotes.	Sealed bids (using M.G.L. c.30, §39M procedure).	Sealed bids.	Solicit statements of qualifications.
<b>Advertising Requirements</b>	No.	Advertise once in the <i>Central Register</i> and post a notice on your jurisdiction's bulletin board for at least two weeks before bids are due. Posting on your website or Comm-PASS is optional.	Advertise once in the <i>Central Register</i> and newspaper at least two weeks before bids are due, and post on your jurisdiction's bulletin board or website for one week before bids are due.	Advertise once in the <i>Central Register</i> and newspaper at least two weeks before bids are due, and post on your jurisdiction's bulletin board or website for one week before bids are due.	Advertise the request for qualifications once in the <i>Central Register</i> , newspaper, and Comm-PASS at least two weeks before bids are due. <sup>1</sup>
<b>DCAM Certification</b>	No.	No.	No.	Required for general bidders and filed sub-bidders.	Required for general bidders and filed sub-bidders.
<b>OSHA Training</b>	No.	Yes.	Yes.	Yes.	Yes.
<b>City/Town Prequalification</b>	No.	No.	No.	Optional. <sup>2</sup>	Yes.
<b>Filed Sub-bids</b>	No.	No.	No.	Yes (\$20,000 and over).	Yes (\$20,000 and over).
<b>Bid Deposit</b>	No.	No.	5% of the value of the total bid.	5% of the value of the total bid, or sub-bid.	5% of the value of the total bid, or sub-bid.
<b>Payment Bond</b>	50% payment bond, if project cost is more than \$2,000.	50% payment bond.	50% payment bond.	100% payment bond.	100% payment bond.
<b>Performance Bond</b>	No.	No.	No.	100% performance bond.	100% performance bond.
<b>Prevailing Wage</b>	Yes.	Yes.	Yes.	Yes.	Yes.
<b>Contractor Evaluation</b>	No.	No.	No.	Yes.	Yes.

<sup>1</sup> The advertising procedures listed pertain only to the request for qualifications. Within 14 days of the completion of the prequalification evaluation process, you are required to post a notice in your jurisdiction, and on Comm-PASS listing those general and sub-bidders who have been prequalified. A copy of the notice must be sent via first class mail, postage pre-paid to all prequalified general and sub-contractors along with an invitation to bid. The invitation to bid must have a deadline of at least two weeks. You may only solicit bids from those contractors that have been prequalified.

<sup>2</sup> If you decide to use the optional prequalification process for projects over \$100,000, follow the procedures listed in the "Over \$10,000,000" column.

**M.G.L. c. 30, §39M**

**PUBLIC WORKS (NON-BUILDING) CONSTRUCTION**

<b>Estimated Contract</b>	<b>\$10,000 and under</b>	<b>Over \$10,000</b>
<b>Procurement Procedure</b>	No.	Sealed bids.
<b>Advertising Required</b>	No.	Advertise once in the <i>Central Register</i> and your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for one week before bids are due.
<b>DCAM Certification</b>	No.	No.
<b>OSHA Training</b>	No.	Yes.
<b>City/Town Prequalification</b>	No.	No. <sup>1</sup>
<b>Filed Sub-bids</b>	No.	No.
<b>Bid Deposit</b>	No.	5% of the value of the total bid.
<b>Payment Bond</b>	50% payment bond, if project cost is more than \$2,000.	50% payment bond.
<b>Performance Bond</b>	No.	No.
<b>Prevailing Wage</b>	Yes.	Yes.

<sup>1</sup> Although M.G.L. c.30, §39M does not mandate a contractor prequalification process, prequalification of bidders by the Massachusetts Highway Department is required for contracts of \$50,000 or more where the awarding authority receives State Aid funds under M.G.L. c.90, §34, or the work is on a state road, regardless of whether the awarding authority receives State Aid funds under M.G.L. c.90, §34.

**M.G.L. c.30B alternative procurement procedure referenced from M.G.L. c.30, §39M(d).  
PUBLIC WORKS (NON-BUILDING) CONSTRUCTION**

<b>Estimated Contract Over \$10,000 up to \$25,000</b>	
<b>Procurement Procedure</b>	Sealed bids.
<b>Advertising Required</b>	Advertise once in your local newspaper at least two weeks before bids are due, <b>and</b> post a notice on your jurisdiction's bulletin board for at least two weeks before bids are due. M.G.L. c.9, §20A requires an advertisement in the <i>Central Register</i> .
<b>DCAM Certification</b>	No.
<b>OSHA Training</b>	Yes.
<b>City/Town Prequalification</b>	No.
<b>Filed Sub-Bids</b>	No.
<b>Bid Deposit</b>	No.
<b>Payment Bond</b>	50% payment bond.
<b>Performance Bond</b>	No.
<b>Prevailing Wage</b>	Yes.

# M.G.L. c.7, §§38A½-O PUBLIC BUILDING PROJECTS DESIGN SERVICES

Cities, Towns, Regional School Districts, and Horace Mann Charter Schools<sup>123</sup>

Estimated Construction Cost Design Fee*	\$100,000 or less *	Over \$100,000*
Procurement Procedure	No. Recommend soliciting qualifications and prices from at least three designers.	Qualifications-based selection process. Jurisdiction must either set the design fee or set a not-to-exceed fee limit and negotiate the fee with the top-ranked designer within the fee limit.
Advertising Required	No.	Advertise once in the <i>Central Register</i> and your local newspaper at least two weeks before the deadline for filing applications.
Designer Selection Board	No.	Application.
Designer Evaluation (Submit to DCAM and Designer Selection Board)	No.	Yes.
Registration	No.	Yes, by Board of Registration in the appropriate discipline.
Insurance	No.	10% of the total cost of the project or \$1 million, whichever is less.
Prevailing Wage	No.	No.

\* Design Fee: The Designer Selection Board recommends that when there is no estimated cost of construction, the designer selection procedures should be followed if the design fee is \$10,000 or more. For practical purposes, the design fee should not exceed 10% of the estimated cost of construction.

<sup>1</sup> Cities, Towns, School Districts, and Horace Mann Charter Schools are required to adopt their own procedures for selecting designers for building projects. These procedures must conform to the purposes and intent of the designer selection process as outlined in M.G.L. c.7, §§38A½-O and noted herein. See the *Model Designer Selection Procedures for Municipalities and Other Local Public Agencies* developed by this office at <http://www.mass.gov/ig/publ/dsbguide.htm>.

<sup>2</sup> Housing Authorities must follow the procedures established by the Department of Housing and Community Development for design of state-funded housing.

<sup>3</sup> Executive Departments of the Commonwealth and Commonwealth Charter Schools are subject to the jurisdiction of the Designer Selection Board when the design fee is \$10,000 or more and the construction project is estimated to cost \$100,000 or more.

## M.G.L. c.30B Procurement of Supplies and Services

Estimated Contract	Under \$5,000	\$5,000 to \$24,999	\$25,000 and over
<b>Procurement Procedure</b>	Sound business practices. <sup>1</sup>	Solicit three written or oral quotes.	Sealed bids or proposals. (M.G.L. c.30B, §§5 or 6).
<b>Advertising Required</b>	No.	No.	Advertise once in a newspaper of general circulation at least two weeks before bids or proposals are due, <b>and</b> post a notice on your jurisdiction's bulletin board or website for two weeks before bids or proposals are due. If \$100,000 or more, advertise once in the <i>Goods and Services Bulletin</i> .
<b>Award contract to:</b>	Responsible <sup>2</sup> person offering a competitive price.	Responsible person offering the lowest price.	Under §5, the responsive <sup>3</sup> and responsible bidder offering the lowest price. Under §6, the most advantageous proposal from a responsive and responsible proposer taking into consideration price and evaluation criteria.
<b>Written Contract<sup>4</sup></b>	No.	Yes.	Yes.
<b>Maximum Contract Term<sup>5</sup></b>	Three years, unless majority vote authorizes longer.	Three years, unless majority vote authorizes longer.	Three years, unless majority vote authorizes longer.

<sup>1</sup> This office interprets sound business practices to mean periodically checking price lists or seeking price quotes to ensure that you are receiving a competitive price for the supply or service.

<sup>2</sup> M.G.L. c.30B, §2 defines a responsible bidder or offeror as "a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance."

<sup>3</sup> M.G.L. c.30B, §2 defines a responsive bidder or offeror as "a person who has submitted a bid or proposal which conforms in all respects to the invitation for bids or request for proposals."

<sup>4</sup> M.G.L. c.30B, §17(a) states "All contracts in the amount of [\$5,000] or more shall be in writing, and the governmental body shall make no payment for a supply or service rendered prior to the execution of such contract."

<sup>5</sup> M.G.L. c.30B, §12(b) states "Unless authorized by majority vote, a procurement officer shall not award a contract for a term exceeding three years, including any renewal, extension, or option."

## **APPENDIX B**

## Chapter 11

# Effective Cash Management

### Importance of Cash Management

Ch. 44 §55B requires that all municipal monies, except those required to be kept liquid for purposes of distribution, be productively invested at the "highest possible rate reasonably available, taking account of safety, liquidity, and yield." Liquidity is the quality of being readily convertible into cash without substantial transaction costs. Security is the quality of assurance that the investment expectation will be fulfilled in a timely fashion. Yield is the measure of effective return on an investment, usually expressed as a percent. Accordingly, each municipal treasurer possesses a legal obligation to invest wisely, prudently, and effectively. This goal can be achieved through the implementation of an effective cash management program.

Cash management consists of taking the necessary actions to maintain adequate levels of cash to meet operational and capital requirements and to obtain the maximum yield on short-term investments of pooled, idle cash. A good cash management program is a very significant component of the overall financial management of a municipality. Such a program benefits the city or town by increasing non-tax revenues, improving the control and superintendence of cash, increasing contacts with members of the financial community and lowering borrowing costs, while at the same time maintaining the safety of the municipality's funds.

### The Goals of Cash Management

The primary goals of a good cash management system are:

- To maintain adequate monies at hand to meet the daily cash requirements of the municipality while maximizing the amount available for investment and providing for the safety of the funds
- To obtain the maximum earnings on invested funds while ensuring their safety.

In order to reach these primary goals, a treasurer should strive to:

1. Develop strong, internal control of cash receipts and disbursements.
2. Develop an Investment Policy
3. Establish improved procedures for collecting outstanding taxes.
4. Establish clear lines of communication between the treasurer and department heads.

## Effective Cash Management

5. Develop solid professional relationships with local bankers and other members of the investment community.

## Elements of an Effective Cash Management Program

### Bank Relations

The treasurer should strive to be constantly aware of the range of services available from area banks. Since banks' service charges and investment rates vary, the treasurer should regularly evaluate the charges and rates of the banks used by the municipality to make certain that continuing to utilize these banks best serves the interests of the municipality. When selling bonds or notes, the treasurer should endeavor to receive a sufficient number of bids to ensure competitive rates for the borrowed funds. Whether borrowing or investing monies, the treasurer should solicit bids from at least three area banks.

The treasurer should critically review bank statements for treasury checking accounts and should funnel all activity into one account when possible. Also, the treasurer should utilize a uniform system of forms and procedures for all collection, deposit, and disbursement activities. (See Chapter 12, "Procuring Banking Services," for more detailed information about banking relationships.)

### Cash Flow Statements

As a component of implementing an effective cash management program, the treasurer must prepare a cash flow statement, also called a cash budget. Cash budgeting involves the estimation of cash receipts and cash disbursements to determine cash availability. A treasurer can best identify the municipality's major cash items by examining an annual budget, payment and collection records and past cash flow patterns. See end of chapter 11 for a list of common receipts and disbursements of a municipality.)

### Estimating Collection Receipts

Local taxes and state and federal grants constitute the primary sources of municipal funds. By reviewing a municipality's treasury and accounting records, a treasurer can determine the pattern of receipts of that municipality. To assist in determining this pattern, the treasurer should develop a table that displays: (1) the type of each receipt, (2) the total amount of the receipt and (3) the month when each portion of the receipt was received. If the treasurer traces the cash flow back 2 or 3 years, a recognizable pattern should become apparent.

The treasurer should assess the historical patterns of these cash flows in light of current estimates and events. Although making adjustments for changing time environments is uncertain business, attempting to make such adjustments should improve a collections forecast.

### **Forecasting Disbursements**

Municipal payrolls account for approximately seventy percent of the expenditures of most cities and towns. These expenditures tend to be relatively constant; accordingly, they can be reliably predicted. A treasurer should use prior payroll records, together with the next fiscal year's budget, to calculate the amount of the annual payroll.

The gross payroll, however, is not the amount disbursed. Rather, the amount disbursed is the gross payroll amount less deductions for federal and state income taxes and for fringe benefits, such as workers compensation and retirement. The payroll disbursement forecast should also include adjustments for seasonal or temporary workers and for seasonal payments, such as vacation advances in the summer months. If a municipality offers a lump sum payment option for teachers, the payments are disbursed at the end of the school year.

Disbursement of monies previously withheld for income taxes and for employee benefits constitutes a significant payment by a municipality. To forecast the amount of this disbursement for some discrete period, such as from July 1 through January 1, the treasurer must add all of the deductions from a weekly or biweekly payroll and multiply the sum by the number of pay periods falling within the designated time period.

As part of forecasting disbursements for personnel costs, the treasurer should attempt to estimate the actual cash disbursement if that disbursement deviates from the budgeted or authorized amount. Budgeted amounts can change only with supplemental appropriations, while authorized amounts can change with the increase or decrease of actual employees.

After completing the payroll disbursement forecast, the treasurer should develop forecasts for other kinds of payments. The treasurer might begin by analyzing each departmental budget for non-payroll items and then focusing on the more expensive items first. For each item, the treasurer should converse with the departmental officials familiar with expenditures to discover the pattern of past cash disbursements with respect to that item and the anticipated pattern and amount of expenditure for the item for the upcoming year. The treasurer, based upon a greater familiarity with the timing and volume of cash outflows, should ensure that these patterns and expenditure projections are reasonable.

### **Analyzing Cash Flow and Preparing a Cash Budget**

At a minimum, a treasurer should prepare cash flow data on a monthly basis for the current year. In larger communities, the treasurer should compile cash flow information more frequently, on a daily, weekly, or biweekly basis, depending on the size of the community.

## **Effective Cash Management**

The treasurer should prepare cash flow summaries using two basic categories of inflows and outflows of cash, recurring and extraordinary. Recurring payments and receipts, such as payroll expenses and property taxes payments, can be anticipated regularly, month after month; extraordinary payments and receipts, on the other hand, result from nonrecurring programs or items, such as federal grants or capital expenditures.

The treasurer should use the history of major collections and disbursements for the previous three to five years to identify recurring expense and disbursement patterns. The treasurer should then extrapolate these past trends into the future, being careful, at the same time, to make adjustments for anticipated changes in timing and payment patterns and to recognize when particular historical data is not representative.

Analyzing the municipality's current operating budget, looking particularly for the percentage increase in payroll and in other expenditures, for changes in seasonal spending patterns and for adjustments caused by the addition or deletion of programs, will provide crucial information for preparing a cash flow analysis. Also, examining the capital budget and communicating with department heads will assist in making projections concerning special cash flow items. Of course, analyzing historical information is of little assistance in projecting special revenues and expenditures in a cash flow analysis.

Because cash availability is the fundamental concern of cash management, some treasurers are very conservative in estimating receipts of funds and liberal in estimating disbursements when they prepare a cash budget. For instance, they might budget a receipt expected to be taken in at the end of a month as being received the following month. Certainly, it is better to err on the conservative side. Notwithstanding, accuracy is critical in estimating and managing a municipality's cash.

### **Suggestions for Improving Cash Flow**

The treasurer can maximize the amount of a municipality's available cash by accelerating cash receipts. A treasurer can increase the available cash amount by:

- Making daily deposits.
- Using a lock box.
- Receiving wire transfers of state aid.
- Applying promptly for reimbursement of state/federal grants.
- Utilizing, direct deposits, Automated Clearing House payments, and other electronic means of transferring funds, whenever possible, making sure that the appropriate safeguards are in effect.

## Effective Cash Management

- Making sure that all departmental receipts are turned over promptly (more than \$ 1,000 should be turned over to the treasurer daily and all departments must turn in all money weekly)

The treasurer should induce municipal departments with large cash receipts to make deposits directly into an account specified by the treasurer, providing the treasurer with a written notice of each deposit, together with the deposit receipt provided by the bank. This practice will result not only in an earlier deposit of the funds, but also in a more accurate deposit record since the bank will check the accuracy of the deposit slip. Examples: Collectors' receipts, Cafeteria receipts, student activity accounts

The treasurer should ensure that checks for large amounts are deposited immediately. If, for example, a tax collector receives tax escrow payments from a mortgagee bank at a time when the collector is too busy to process them, the treasurer should instruct the collector to prepare a deposit slip and deposit the bank check immediately, retaining a duplicate copy of the deposit slip with the payment breakdown. In this way, the money will be available for investment right away, and the collector can process the payment information whenever convenient.

The treasurer should urge the collector to make use of tax takings and other tax payment enforcement remedies allowed by law to expedite the collection of unpaid taxes. The treasurer should actively proceed with tax foreclosures and with land of low value sales in accordance with the best interests of the municipality.

The treasurer can also improve cash flow by working with department heads to schedule certain cash disbursements. For example, if a municipality has appropriated money to the public works department for the purchase of new trucks, the treasurer should encourage the department head to arrange for delivery of the trucks no earlier than late April, close to the due date of the 2<sup>nd</sup> semiannual tax payments or the 4<sup>th</sup> quarterly tax payments, when funds will be on hand to pay for those trucks. Such planning minimizes the need for revenue anticipation borrowing.

When possible, the treasurer should first pay bills that offer discounts, postponing the payments of other bills until the due date. Also, when market conditions permit, the treasurer should schedule the issuance of debt to make the payment due dates coincide with times when the community's cash revenues are at their maximums. Scheduling debt payments as late in the Fiscal Year as possible allows the treasurer to invest the appropriated funds for a longer period, earning more interest for the general fund. The treasurer should require all capital project managers to provide regular reports of project payment schedules, permitting the treasurer to obtain maximum earnings on project funds.

## Effective Cash Management

### Wire Transfers for Bills Payable

The treasurer should wire transfer Fed Funds to cover large payments (over \$100,000) to meet obligations on the date due. Examples: Debt service, health insurance premiums, State and federal withholding tax obligations, large payments for power contracts for municipal light departments, large contractor payments for building projects, obligations to Retirement Board Pension Fund. The treasurer should work with the Accountant or Auditor to have such bills listed in the warrant as "No Check" items so that a check is not produced, but the item is charged to the proper account and the treasurer is authorized to hold a payment until the due date.

The Massachusetts Municipal Depository Trust Funds and some banks do not charge for wire transfers out of municipal accounts.

### Effectively Investing Available Cash

Ch. 44 §55B obligates the treasurer to invest all monies not required for current operations so as to receive the highest rate of return reasonably available taking into account safety, liquidity and yield. To maximize interest income, the treasurer must determine how much money is available to invest by answering the following questions:

- How much cash is on hand?
- How much money is needed to meet weekly or monthly warrants?
- How much money will be deposited weekly or monthly?

The treasurer should use the answers to these questions as a basis for planning investments. By maintaining a chart of deposit accounts, such as the bank ledger discussed in Chapter 3, adding the daily deposits to these accounts, and subtracting amounts transferred or paid on warrants, the treasurer can determine exactly how much cash is available to invest. Furthermore, the cash flow budget will permit the treasurer to determine the length of time for which particular funds can remain in investments.

### The Yield Curve

The cost of money varies according to the length of time for which it is borrowed or loaned. Generally, longer time periods are deemed to have a greater risk associated with them and thus command higher interest rates. This phenomenon, of course, favors a municipality when making long-term investments and disfavors the community when making long-term borrowings. Accordingly, treasurers should use cash flow budgets to design investments for the longest reasonable periods in order to obtain the highest yields on these investments.

Treasurers should attempt to be constantly aware of the various interest rates offered by area banks. They should regularly communicate with these banks and ask to be on their mailing lists for publications about bank services and about interest rates on different types of investments over varying time periods. Treasurers should also visit the websites of area banks to review information about interest rates and bank products. Treasurers should seek competition from banks for Certificates of Deposit and other short term investments. Bank rates should be compared to the Massachusetts Municipal Depository Trust (MMDT) rates. (See Chapter 12, Procuring Banking Services.)

### Types of Investments

Many communities maintain written investment policies that serve as a guideline in making investments of short-term funds. These policies delineate investment procedures and considerations and define levels of acceptable risk. Frequently, the policies identify the financial institutions that have satisfied the community's criteria for secure deposits. In addition, the policies generally include specific information about delegation of authority, internal controls, ethics and conflict of interest. A committee for the Mass Collectors and Treasurers Association (MCTA) has developed a Model Investment Policy for the use of its members. When shared with municipal officials and auditors, it can be a very useful tool to insure confidence in the treasurer's ability to invest. See addendum for the model.

Ultimately, the standard to which a treasurer is held in making investments is the "prudent person" standard. A treasurer should always remember to weigh the risk of financial loss when making municipal investments. When investing a municipality's money, the treasurer should carefully avoid high-risk or speculative investments, even if legally permitted.

Ch. 44 §§54 & 55 identify the various institutions into which municipal funds may be deposited. See law in Addendum of this manual or in [www.mass.gov](http://www.mass.gov) website. ("Search for a law" allows one to put in a chapter and section of a law). A treasurer who deposits monies into these institutions will not be personally liable for any loss of money due to the failure of the institutions. (44:55A) Notwithstanding, a prudent treasurer must make certain that deposits and investments are sufficiently insured, adequately collateralized and invested in institutions that have been researched for stability and safety.

The FDIC insures deposits in FDIC-insured institutions. All types of deposits received by insured institutions in their usual course of business are insured up to \$100,000 per deposit, including savings deposits, checking deposits, deposits in NOW accounts and time deposits, including CDs. In the case of a bank failure, the FDIC insurance protects deposits that are payable in the U.S. The treasurer should communicate with the FDIC to determine whether separately named accounts are considered as separate deposits for the purposes of applying the \$100,000 limit.

## **Effective Cash Management**

In the past, a number of governmental entities incurred significant losses due to inadequately secured investments. In order to remedy this situation, the Governmental Accounting Standards Board (GASB) issued Statement 3, which requires governmental entities to disclose their policies regarding securitization and safekeeping for deposits and investments, including repurchase agreements, better enabling investors to assess the degree of risk more accurately. These disclosures must inform potential investors about situations in which a greater credit risk exists during the investment period than on the balance sheet date.

Cities and towns should disclose the amount of their total bank balances that are:

- Insured or collateralized with securities held by the municipality or by an agent in the municipality's name.
- Collateralized with securities held by their financial institutions or by an agent in the municipality's name.
- Uncollateralized.

The carrying amount and the market value of investments should also be disclosed for each type of investment as of the balance sheet date. The disclosure should state the total amount of each type of investment and should categorize investments that are:

- Insured or registered or held by the municipality or its agent in the municipality's name.
- Uninsured or unregistered, with the securities held by the counterparty in the municipality's name.
- Uninsured or unregistered, with the securities held by the counterparty but not in the municipality's name.

## **Certificates of Deposit**

A Certificate of Deposit, generally known as a CD, is a written acknowledgement by a commercial bank, savings and loan institution or mutual savings bank containing a promise to pay interest at a specified rate for a fixed period of time for funds deposited in the institution. CDs provide a useful instrument for short-term investments, usually more than 7 days. They are available in almost any denomination, although most have a minimum amount. The bank pays interest on the certificate's face value, and the interest accrues on a 360-day or 365-day basis. Rates vary depending on the length of time for which the certificates are issued, the amount of money deposited and the prevailing market rate. Rates also vary among banks, making it important for treasurers to obtain quotes from a number of banks before making a purchase.

Because monies are deposited in a CD for a fixed term, the instrument is not considered a liquid investment. A bank can legally refuse to return the money

before the maturity date. If a bank allows redemption before the maturity date, the municipality must pay a substantial, early withdrawal penalty. Accordingly, a treasurer should only purchase a CD when it is very probable that the municipality will not have to spend the money during the CD's fixed term.

On the other hand, if a municipality can afford to tie up money for fixed period, a CD provides an effective vehicle for obtaining fixed interest rates for that period. Of course, timing the purchase of a CD is important since interest rates vary dramatically. The treasurer should strive to make the purchase when interest rates are high. The municipality will then continue to earn the high rate until the CD's maturity. On the other hand, if the treasurer purchases a CD when interest rates are low, the instrument will earn interest at the low rate.

### **U.S. Treasury Bills**

Treasury bills are bearer obligations of the U.S. Government that are issued on a discount basis; that is, a purchaser buys the instruments at less than the face value and receives the face value upon redemption. The difference between the purchase price and the redemption price is the interest income. Treasury bills are backed by the full faith and credit of the U.S. Government and are considered the safest investment. Because of their relative safety and marketability, T-Bills, as they are called, generally provide lower yields than do comparable short-term investments.

### **Repurchase Agreement**

A repurchase agreement, also known as a "repo" or a "buyback," is a contract that requires a seller of securities, most often treasury securities, to buy the investment back in the future at a designated time and price. An advantage of this investment vehicle is the flexibility of its maturity. A repo may be sold for a fixed period of time, on demand, or renewable on a day-to-day basis.

The authority of a municipal treasurer to invest in repurchase agreements is set out in Ch. 44 §55. This statute permits the treasurer to invest in "obligations issued or unconditionally guaranteed by the United States government or any agency thereof and having a maturity from date of purchase of one year or less, or in United States government securities or securities of United States government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed ninety days."

However, while repos offer flexibility in maturity dates, they are not without risk. In the past, some banks have used the same security for several, simultaneous repurchase agreements. Accordingly, when investing in a repo, the treasurer should make certain to take possession of the underlying security or to receive written notification of the transaction from a third-party trustee who holds the

## **Effective Cash Management**

security on behalf of the municipality. In this way, the municipality will be protected in the case of a bank default.

### **Money Market Deposit Accounts (MMDAs)**

A money market account is a savings account that shares some of the characteristics of a money market fund, a mutual fund that invests solely in short-term securities. These accounts, like other saving accounts, are insured by the Federal government up to \$100,000. Banks generally place restrictions on money market accounts. The restrictions usually include:

- A minimum daily balance requirement, with an interest rate reduction if the balance falls below this minimum.
- A limit on the number of withdrawals, such as 6 per month with a maximum of 3 checks. Under such a limit, a depositor could, for example, write 3 checks and make 3 withdrawal transfers in a month. Alternatively, the depositor might write 2 checks and make 4 withdrawal transfers and two checks, etc.

MMDA accounts provide an ideal investment vehicle to obtain moderate yields while keeping funds liquid. Every municipality should have at least one money market account. It is up to the treasurer to determine how much money should be kept in these accounts.

### **Massachusetts Municipal Depository Trust**

Ch. 29 §38A authorizes the state treasurer to establish, with the advice of an investment advisory council, one or more combined investment funds and to sell participation units to local governments. Under this authority, the state treasurer has established the Massachusetts Municipal Depository Trust (MMDT), a professionally managed investment pool. The trust manager invests in money market securities, such as CDs, T-Bills, repos, banker's acceptances, and commercial paper. It is open to agencies, authorities, commissions, boards, cities, towns, and other public entities within the Commonwealth. Participants purchase shares in the pool by depositing funds. Under the rules and regulations adopted by the state treasurer, no minimums exist regarding either the amounts deposited or the length of time monies may remain on deposit. Rates are subject to fluctuation and are not guaranteed, but have been competitive during the twenty-five years of MMDT's history. Monies deposited in the MMDT are liquid, i.e., they may be accessed at any time by fed funds wire, at no cost to the participant. Pre-authorized wires may be used to pay bills for the participant.

In 2006, the MMDT introduced a Short Term Bond Fund (STBF). Its primary purpose is to offer participation in a diversified portfolio of high quality investment-grade fixed-income assets that seeks to obtain the highest possible level of current income consistent with preservation of capital and liquidity. While the STBF's assets will be invested in high quality instruments, the STBF is not

without risk. The STBF's Investment Adviser invests assets only with issuers whose creditworthiness and compliance with the applicable statutes and policies have been reviewed and found satisfactory by the STBF's Investment Adviser and approved by the Treasurer. To assist the STBF's Investment Adviser in managing the STBF effectively, participants need to provide one day advance notice for investments or redemptions from \$ 1million to \$ 5 million, or two day advance notice if the transactions are in excess of \$ 5 million.

Further information may be obtained by calling MMDT Client Services at 1-800-392-6095.

### **U.S. Government Agency Obligations**

Agency obligations, also referred to as "agency securities" are debt instruments issued by government agencies to fund loans to particular groups of borrowers, such as students, farmers and homebuyers. Agency obligations include the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Home Loan Bank System (FHLB), the Federal Farm Credit Bank (FFCB), and the Student Loan Marketing Association (Sallie Mae. Agency obligations generally yield high credit ratings because of their association with the federal government; however, they are not government obligations backed by the full faith and credit of the U.S. Government. Accordingly, agency obligations are slightly riskier than Treasuries, but they also have the potential for higher earnings.

### **Secondary Markets**

Primary markets allow investors to bid directly for the purchase of securities with issuers and, as a result, tend to provide more favorable prices. Secondary markets permit investors to purchase securities at other times than their issuance dates or to sell securities prior to their maturity dates.

General economic conditions affect interest rates, which in turn determine the market behavior of securities in both primary and secondary markets. Confidence in a particular security can also affect its behavior. Confidence is determined by an investor's perception of the financial health of an institution or the collateral behind a security. It tends to be most important in determining the strength and activity of a security in the secondary market. For instance, Treasury Bills are always very active in both primary and secondary markets because they are backed by the U.S. Government. Understanding how markets behave under a variety of conditions and gaining a feel for how various securities will be affected is a skill acquired through day-to-day experience, as well as by a study of the characteristics of securities.

## Effective Cash Management

### Mutual Fund Money Market Accounts

Ch. 44 §55 permits municipalities to invest in money market funds managed by mutual fund companies. The underlying securities of the funds must be within the guidelines approved by the Commonwealth, similar to securities that would appear on the "legal list" of investments. The statute limits investment to those money market funds that have received the highest possible rating from at least one nationally recognized statistical rating organization. Money market funds fluctuate with the stock market and as managed by the fund managers.

### Investment-Related Matters

Municipalities borrow for a variety of reasons, such as to fund temporary cash needs and to finance the construction of public works. The investment of borrowed funds is heavily regulated by federal arbitrage laws. (See Chapter 9.) Accordingly, the treasurer should work closely with bond counsel to determine the status of existing and proposed federal laws and regulations relating to arbitrage before the municipality effects a borrowing.

A useful resource for treasurers is a "Time Teller Calendar" that computes at a glance interest, elapsed time and maturity dates on notes. Some banks will provide this resource to treasurers. For each day of the year, the calendar exhibits the number of days from that day to any other day in the next nine months.

Every treasurer should keep records of all investments. While the treasurer can design the forms to use for this process, these forms must make it possible to record all the necessary information to provide an accurate picture of each transaction. Type of Security, where purchased, date purchased, length of investment, interest rate and interest amount to be earned should all be included. A treasurer must observe the limitations on deposits in any one bank, set out in Ch. 44 §55. This statute specifies that a municipality may not at any one time have on deposit in a bank or trust company an amount exceeding 60% of the capital and surplus of that institution and that the total of all the municipality's accounts may not exceed 60% of the bank's net equity. If a treasurer wishes to exceed this limit, the bank must pledge additional securities to cover the extra amount deposited. Treasurers should retain these securities in their custody. Banks will make available copies of their most recent "Statement of Condition" from which a treasurer can determine the banks' capital and surplus amounts.

Ch. 44 §55A, absolves treasurers of any personal liability if they, in good faith and in the exercise of due care, deposit public money in the MMDT or in a Massachusetts-organized savings bank, trust company or FDIC banking company and a loss results from the closing up of the depository or from the liquidation of its affairs. This statute does not, however, absolve from liability a treasurer who invests public funds in a non-FDIC bank outside of Massachusetts.

## Typical Receipts and Disbursements

### I. Receipts

#### A. Property Taxes

##### 1. Characteristics

- a) Major portion of revenues
- b) Collected quarterly or semi-annually

#### B. Projection techniques

1. Construct 3-year history of tax collections from historical collection information.
2. Determine gross tax levy; reduce by abatement or overlay and amount of uncollectible taxes to obtain net tax levy.
3. Multiply net tax levy by 3-year percentage calculated in step I.B.1.
4. Make adjustments for anticipated changes in collection patterns.

#### C. Potential adjustments

1. Changes in anticipated amounts of abatements granted or uncollectible taxes
2. Economic upturns or downturns
3. Changes in tax bill issuance dates

#### D. Motor Vehicle Excise

1. Usually the largest "local receipt"
2. Collection dependent on the RMV's providing the necessary billing information to the municipality

#### E. State Aid

##### 1. Characteristics

- a) Significant portion of revenues
- b) Includes aid for education and other programs
- c) Collected quarterly, semi-annually or as a reimbursement

##### 2. Projection techniques

- a) Review annual budget to identify all reimbursable or chargeable programs and their estimated amounts.

## Effective Cash Management

- b) Discuss with department personnel the timing of program expenditures and claims processing.
  - c) Determine nature of payments, whether cash advances, letters-of-credit, or claim reimbursements.
  - d) Discuss with federal and state payment agencies the timing of anticipated payments.
3. Potential adjustments
- a) Changes in federal or state programs
  - b) Delays or accelerations of program expenditures
  - c) Changes in amounts of program expenditures
  - d) Changes in claim approval process or payment process by federal or state agencies

### F. Departmental

#### 1. Characteristics

- a) Includes user payments for hospital, library, and water and sewer services
- b) May be collected by departments, in which case the timing and amount of revenues collected depends on agency efficiency in billing and collection and remittance agreements with municipal collector

#### 2. Projection techniques

Construct collection history, using historical collection patterns, the agency's annual budget, and discussions with agency personnel, and apply amount of anticipated annual revenues

#### 3. Potential adjustments

- a) Changes in fees or rates
- b) Increase or decrease in usage
- c) Changes in agency collection procedures

### G. Other Revenues

#### 1. Characteristics

- a) Includes cash collections from parking meters, golf courses, and other services as well as licenses, fines, and subscriptions
- b) Small portion of revenues

#### 2. Projection techniques

If amounts are material (greater than \$5,000 for any forecast horizon), apply the estimated annual amount evenly throughout collection period. For major amounts, apply in accordance with collection history.

3. Potential adjustments

- a) Changes in rates, fees, or fines (Assure that upcoming amounts are reasonable.)
- b) Changes in usage or delinquency

**II. Disbursements**

A. Salaries and Wages

1. Characteristics

- a) Usually at least 70% of general fund budget
- b) Very predictable

2. Projection techniques

- a) From annual budget and payroll records, determine annual payroll disbursements.
- b) Eliminate payroll deductions to find net cash outflow.
- c) Apportion by established pay dates.
- d) Adjust as necessary for collective bargaining changes.

3. Potential adjustments

- a) Changes in number of employees
- b) Increase or decrease in salaries and wages
- c) Seasonal or overtime payments
- d) Changes in group insurance, income taxes, and other deductions

B. Payroll Taxes

1. Characteristics

- a) Includes federal income taxes and state taxes
- b) About 30% of payroll expenditures

## Effective Cash Management

### 2. Projection techniques

- a) From the salaries and wages forecast, determine annual payroll tax disbursements.
- b) Estimate amount required on due dates by dividing annual taxes into quarterly or semi-annual payments.

### 3. Potential adjustments

- a) See Salaries and Wages
- b) Changes in tax rates

## C. Debt Service

### 1. Characteristics

- a) Payments determined by fixed schedule

### 2. Projection techniques

- a) From debt maturity and coupon redemption schedules, determine amount due on redemption dates.

### 3. Potential adjustments

- a) Additions of new debt issues or adjustments for refinancings in upcoming year

## D. Capital Expenditures

### 1. Characteristics

- a) Irregular, plans often change

### 2. Projection techniques

- a) Develop separate cash flow estimates for each project.
- b) From construction contracts, determine total construction costs.
- c) From discussions with construction supervisors, determine probability of cost increases, pace of construction, and likely payment patterns.
- d) Estimate the timing and amount of payments.
- e) Deduct retainage from in-progress payments and add back to final payment.

### 3. Potential adjustments

## Effective Cash Management

- a) Changes in construction schedules (Develop advanced warning system with construction supervisor.)

### E. Employee Benefit Plans

#### 1. Characteristics

- a) Includes funded pension plans, health insurance, group life insurance, and disability income plans

#### 2. Projection techniques

- a) As specified in contracts, estimate amounts due on each payment date

#### 3. Potential adjustments

- a) Changes in insurance rates
- b) Changes in number of employees
- c) Changes in number and nature of plans in employee benefit package
- d) Changes in number of employees qualifying for benefits, such as new retirees

### F. Materials and Supplies

#### 1. Characteristics

- a) Usually minor portion of expenditures
- b) Includes office supplies, stationery, postage, printed forms, vehicle supplies, and textbooks and school supplies (usually purchased during the summer)

#### 2. Projection techniques

- a) From annual budget and purchase contracts, isolate major items.
- b) From discussions with department personnel, predict timing of outflow for major items.
- c) Approximate smaller cash payments based on annual budget and past experience. (If amounts are not significant, do not forecast.)

#### 3. Potential adjustments

- a) Usually only minor adjustments, but can be significant during budget cutbacks

## Effective Cash Management

- b) Changes in usage rates due to purchase cycles (e.g., textbooks or vehicles every two years)

### G. Utilities

#### 1. Characteristics

- a) Usually minor portion of expenditures
- b) Monthly, bimonthly, or quarterly payments

#### 2. Projection techniques

- a) Using contracts, historical results, and current rates, estimate timing and amount of utility payments

### H. Potential adjustments

- 1. Rate changes or price increases
- 2. Usage changes, particularly during conservation programs

### I. Other Current Costs

#### 1. Characteristics

- a) Includes travel expenditures, dues and subscriptions, per diem fees, other insurance, court judgments, and tax refunds

#### 2. Projection techniques

- a) From annual budget and discussions with department personnel, estimate timing of nonrecurring costs.

#### 3. Potential adjustments

- a) Changes in timing of payment or cancellation of plans

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## **APPENDIX C**

**Grafton Affordable Housing Trust Fund  
Annual Report  
for  
Fiscal Year \_\_\_\_\_**

**Submitted to Grafton Board of Selectmen  
(date)**

**ANNUAL REPORT FY \_\_\_\_\_**

**I FINANCIAL REPORTING REQUIREMENTS**

According to Article Ninth of Grafton's Affordable Housing Trust Fund's Declaration of Trust, the Trust shall submit a report for each fiscal year to the Town. This report includes information concerning the management of the Trust, the activity which was conducted by the Trust, including a summary of affordable housing programs or properties the Trust assisted along with a description of funds received and expended during the year.

**II BOARD MEMBERS**

**III ACTIVITY**

**IV DESCRIPTION AND SOURCE OF FUNDS RECEIVED**

**V FUNDS EXPENDED**

**VI AUDIT**

Attached is the independent Audit of the Trust which was conducted on \_\_\_\_\_ and covers the time period \_\_\_\_\_ ending \_\_\_\_\_.

## **APPENDIX D**

## The General Laws of Massachusetts

[Search the Laws](#)

## PART I. ADMINISTRATION OF THE GOVERNMENT

## TITLE VII. CITIES, TOWNS AND DISTRICTS

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## CHAPTER 39. MUNICIPAL GOVERNMENT

## TOWN MEETINGS

## Chapter 39: Section 23A. Definitions

Section 23A. The following terms as used in sections twenty-three B and twenty-three C shall have the following meanings:—

“Deliberation”, a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

“Governmental body”, every board, commission, committee or subcommittee of any district, city, region or town, however elected, appointed or otherwise constituted, and the governing board of a local housing, redevelopment or similar authority; provided, however, that this definition shall not include a town meeting.

“Made public”, when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

“Meeting”, any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public business or public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

“Quorum”, a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

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## CHAPTER 39. MUNICIPAL GOVERNMENT

## TOWN MEETINGS

**Chapter 39: Section 23B. Open meetings of governmental bodies**

Section 23B. All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

- (6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
  - (7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
  - (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
  - (9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
  - (10) to carry property for accounting purposes other than acquisition date values;
  - (11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
  - (12) to make distributions or divisions of principal in kind;
  - (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in-favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
  - (14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
  - (15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
  - (16) to extend the time for payment of any obligation to the trust.
- (d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.
- (e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.
  - (f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.
  - (g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.
  - (h) The books and records of the trust shall be audited annually by an independent auditor in accordance with

- (b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
- (c) to speak in his own behalf.
- (3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
- (4) To discuss the deployment of security personnel or devices.
- (5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
- (6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.
- (7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.
- (8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.
- (9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall

become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A 1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

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## CHAPTER 39. MUNICIPAL GOVERNMENT

### TOWN MEETINGS

#### Chapter 39: Section 23C. Regulation of participation by public in open meetings

Section 23C. No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

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#### CHAPTER 40. POWERS AND DUTIES OF CITIES AND TOWNS

##### TAKING, PURCHASE AND ABANDONMENT OF LAND

#### Chapter 40: Section 15A. Transfer of land; procedure

Section 15A. Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land.

In any city or town which accepts the provisions of this paragraph, when land is being transferred for the purpose of constructing low and moderate income housing, the vote required of the city council or the town meeting shall be by a majority vote.

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## CHAPTER 44. MUNICIPAL FINANCE

## MISCELLANEOUS PROVISIONS

**Chapter 44: Section 54. Investment of trust funds**

Section 54. Trust funds, including cemetery perpetual care funds, unless otherwise provided or directed by the donor thereof, shall be placed at interest in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invested by cities or towns in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine, or in paid-up shares and accounts of and in co-operative banks, or in shares of savings and loan associations or in shares or savings deposits of federal savings and loan associations doing business in the commonwealth to an amount not exceeding one hundred thousand dollars, or in bonds or notes which are legal investments for savings banks. Cities and towns having such funds in the custody of the treasurer in an aggregate amount in excess of two hundred and fifty thousand dollars may also invest such funds in securities, other than mortgages or collateral loans, which are legal for the investment of funds of savings banks under the laws of the commonwealth; provided, that not more than fifteen per cent of any such trust funds shall be invested in bank stocks and insurance company stocks, nor shall more than one and one-half per cent of such funds be invested in the stock of any one bank or insurance company. This section shall not apply to the city of Boston.

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#### CHAPTER 44. MUNICIPAL FINANCE

##### MISCELLANEOUS PROVISIONS

#### **Chapter 44: Section 55B. Investment of public funds**

Section 55B. All moneys held in the name of a city, town, district or regional school district or any other account under the jurisdiction of a city, town, district, or regional school district or officer thereof, which are not required to be kept liquid for purposes of distribution, shall be invested in such a manner as to require the payment of interest on the money at the highest possible rate reasonably available, taking account of safety liquidity and yield. All officers of a city, town district or regional school district who control the investment of such funds shall invest them prudently, consistent with the provisions of sections fifty-four and fifty-five and, if the funds are the result of gift or grant or bequest, the terms of such gift or grant or bequest, so as to accrue the highest amount of interest reasonably available on such funds taking account of safety, liquidity and yield. The provisions of section sixty-two shall not apply to this section.

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## CHAPTER 44. MUNICIPAL FINANCE

## MISCELLANEOUS PROVISIONS

**Chapter 44: Section 55. Public funds on deposit; limitations; investments**

Section 55. A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit. For the purpose of paying the principal or interest due on any bond, note or other obligation of the city of Boston, which is payable or requested to be paid in the city of New York, the city of Boston may keep on deposit in any national bank or trust company in the city of New York a sum not exceeding in the aggregate twenty-five thousand dollars; provided, that for a period of two weeks prior to the date of any such payment or payments, said amount may be increased by a sum or sums sufficient to cover the same. A treasurer of a city, town, district or regional school district may invest such portion of revenue cash as he shall deem not required to pay expenses until such cash is available and all or any part of the proceeds from the issue of bonds or notes, prior to their application to the payment of liabilities incurred for the purposes for which the bonds or notes were authorized, in term deposits or certificates of deposit, in trust companies, national banks, savings banks, banking companies or cooperative banks, or in obligations issued or unconditionally guaranteed by the United States government or any agency thereof and having a maturity from date of purchase of one year or less, or in United States government securities or securities of United States government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed ninety days or in shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with Section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least one nationally recognized statistical rating organization and the purchase price of shares of beneficial interest purchased pursuant to this section shall not include any commission that these companies may charge, or in participation units in a combined investment fund under section thirty-eight A of chapter twenty-nine; provided, however, that no temporary notes in anticipation of revenue shall be issued under section four as long as any revenue cash, exclusive of revenue sharing or other revenue cash the use of which is restricted to purposes other than current maintenance expenses, remain so invested.

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## CHAPTER 44. MUNICIPAL FINANCE

## MISCELLANEOUS PROVISIONS

**Chapter 44: Section 55C. Municipal Affordable Housing Trust Fund**

Section 55C. (a) Notwithstanding section 53 or any other general or special law to the contrary, a city or town that accepts this section may establish a trust to be known as the Municipal Affordable Housing Trust Fund, in this section called the trust. The purpose of the trust is to provide for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households. Acceptance shall be by majority vote of the municipal legislative body under section 4 of chapter 4.

(b) There shall be a board of trustees, in this section called the board, which shall include no less than 5 trustees, including the chief executive officer, as defined by section 7 of chapter 4, of the city or town, but where the chief executive officer is a multi-member body, that body shall designate a minimum of 1 of its members to serve on the board. Trustees shall be appointed in a city by the mayor or by the city manager in a Plan D or Plan E municipality, subject in either case, to confirmation by the city council, and in a town by the board of selectmen, shall serve for a term not to exceed 2 years, and are designated as public agents for purposes of the constitution of the commonwealth. Nothing in this subsection shall prevent a board of selectmen from appointing the town manager or town administrator as a member or chair of the board, with or without the power to vote.

(c) The powers of the board, all of which shall be carried on in furtherance of the purposes set forth in this act, shall include the following powers, but a city or town may, by ordinance or by-law, omit or modify any of these powers and may grant to the board additional powers consistent with this section:—

(1) to accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the trust in connection with any ordinance or by-law or any general or special law or any other source, including money from chapter 44B;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to trust property as the board deems advisable notwithstanding the length of any such lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

(5) to employ advisors and agents, such as accountants, appraisers and lawyers as the board deems necessary;

- (6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the board deems advisable;
  - (7) to apportion receipts and charges between incomes and principal as the board deems advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
  - (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
  - (9) to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the board may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board may deem necessary and appropriate;
  - (10) to carry property for accounting purposes other than acquisition date values;
  - (11) to borrow money on such terms and conditions and from such sources as the board deems advisable, to mortgage and pledge trust assets as collateral;
  - (12) to make distributions or divisions of principal in kind;
  - (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of this act, to continue to hold the same for such period of time as the board may deem appropriate;
  - (14) to manage or improve real property; and to abandon any property which the board determined not to be worth retaining;
  - (15) to hold all or part of the trust property uninvested for such purposes and for such time as the board may deem appropriate; and
  - (16) to extend the time for payment of any obligation to the trust.
- (d) Notwithstanding any general or special law to the contrary, all moneys paid to the trust in accordance with any zoning ordinance or by-law, exaction fee, or private contributions shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and to be expended these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the board within 1 year of the date they were appropriated into the trust, remain trust property.
- (e) The trust is a public employer and the members of the board are public employees for purposes of chapter 258.
  - (f) The trust shall be deemed a municipal agency and the trustees special municipal employees, for purposes of chapter 268A.
  - (g) The trust is exempt from chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the commonwealth or any political subdivision thereof.
  - (h) The books and records of the trust shall be audited annually by an independent auditor in accordance with

accepted accounting practices.

- (i) The trust is a governmental body for purposes of sections 23A, 23B and 23C of chapter 39.
- (j) The trust is a board of the city or town for purposes of chapter 30B and section 15A of chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the city or town shall be exempt from said chapter 30B.



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TO: Affordable Housing Trust Fund  
FR: Lisa L. Mead  
RE: Review of Declaration of Trust and Affordable Housing Plan  
DA: May 14, 2009

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Reference is made to the above captioned matter. In that connection this memorandum will provide an analysis and review of the Town of Grafton Affordable Housing Trust Fund Trust and the 2006 Town of Grafton Affordable Housing Plan. Finally, as appropriate, the memorandum will provide strategic recommendations with regard to implementing and/or amending the above mentioned documents as well as .

**I Declaration of Trust of the Town of Grafton Affordable Housing Trust**

The Declaration of Trust (hereinafter "Trust") was created pursuant to a town meeting vote of May 8, 2006. Specifically Article 52 included a motion which provided, "it was voted to accept the provision of Massachusetts General Laws Chapter 44, Section 55C, establishing a trust to be known as the Grafton Affordable Housing Trust Fund, whose purpose shall be to provide for the creation and preservation of affordable housing in the Town of Grafton for the benefit of low and moderate income households." There was no further action taken by Town Meeting. On September 11, 2007 the Trust was recorded with the Worcester County Registry of Deeds at Book 41786 Page 68.

As I have previously noted the Town missed an important step when establishing the Trust. While the Town voted to accept the provisions of G.L. c. 44 §55C, it did not then go on to actually vote to provide certain powers, rights and limitations, as set forth in the statute. The Town Meeting, by majority vote, could have either voted on the trust document, or a by-law, which would have provided the Trust with certain powers and rights, which prior to the establishment of the Trust would have otherwise been vested in another body in the municipality. The proper process would have been to, by a majority vote of Town Meeting, accept G.L. c. 44 §55C, approve either the provisions of the Trust or a by-law, then create the Trust and record it.

The purpose of the general by-laws are to be clear what authority the Town is providing to the Trust. The mere fact that the Trust was created does not in and of itself provide the authorization which is typically held by the municipality to the AHT. In accordance with the Home Rule Amendment to the Massachusetts Constitution, "Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the General Court has conferred upon it." See Mass. Const. amend. Art II §6. In other words, if the General Court has provided the power of a municipality to create an affordable housing trust, it is not sufficient to adopt the statute and create a trust separately; rather the municipality must adopt by-laws to exercise the power.

In my initial memorandum to the Trust I set forth certain requirements with regard to the purchase and sale of real property. One of the motivations behind creating a statute which established Affordable Housing Trusts was to create a vehicle which can respond to market opportunities quickly and to allow for communities to provide funds to the Trust and ensure that those funds stay with the Trust without the need for annual re-appropriation. The ability to act quickly and to retain funds is key to the preservation or creation of affordable housing. The Town Meeting empowers the Trust, through the provisions of a trust or a by-law, to purchase and sell real estate without the need to return to Town Meeting, it gives the Trust powers not otherwise available under the general laws. In the case at hand, the Trust has not yet been actually given those powers, and therefore it is my recommendation<sup>1</sup> that a by-law be adopted at the upcoming Town Meeting in order to rectify what appears to have been an oversight.<sup>2</sup>

The current Trust and the by-law which I have provided, incorporates all of the powers set forth in the statute which the Town can provide to the Trust. The Trust itself contains all of the powers of the Trustees in its Article the Fifth as follows:

The Trustees, for the carrying out of the above purposes and except as herein otherwise specifically provided shall have the same powers with respect to all real and personal estate at any time held by them as if they were absolute owners thereof, and without limiting the foregoing generality: to solicit and accept grants, gifts, devices and bequest or otherwise acquire real or personal property; to invest any of the trust property in such manner as they may deem advisable without being limited as to the kind or amount of any investment; to sell and exchange any or real personal property or any interest therein for such consideration and upon such terms and conditions as they deem advisable; to join with others in the acquisition of real property or any interest therein; to borrow money and mortgage or pledge any part of the trust estate assets and issue notes or other indebtedness; to join with others in borrowings, mortgages and pledges and to guarantee and become surety on obligations of others in transactions in which the Trust has an interest; to execute, as lessor or lessee leases, including for terms expiring after the possible expiration of the Trust; to restore, construct, repair and maintain buildings and make other improvements and establish such reserves as they deem necessary therefore; to pay, compromise, or adjust all obligations incurred and rights acquired in the administration of the Trust; to obtain advice of counsel and to rely thereon; to employ such other persons, agents, brokers, managers, accountants or advisors as they may deem advisable and to pay reasonable compensation and expenses, apportioning same between income and principal as the board deems advisable; and to execute, acknowledge and deliver all such contracts, deeds, mortgages, leases, discharges, and partial releases

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<sup>1</sup> I have previously provided to you a sample by-law for inclusion on the warrant for the upcoming Town Meeting. I have attached the by-law at Exhibit A.

<sup>2</sup> It is not an unusual mistake when adopting local option statutes to accept the General Law but neglect to create an accompanying by-law.

of mortgages, or other instruments as they may deem advisable in the course of the administration of the Trust.

In accordance with G.L. c. 44 ss 55C (16)(d), all moneys paid to the Trust shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. General revenues appropriated into the trust become Trust property, and to be expended, these funds need not be further appropriated. All moneys remaining in the trust at the end of any fiscal year, whether or not expended by the Trustees within one (1) year of the date that they were appropriated into the trust, remain trust property.

The Trustees shall have these and all powers set forth in G.L. c. 44 ss 55C, and shall refrain from exercising any powers in such manner as to violate the provisions of said statute. (Emphasis added)

I have underlined several provisions, which among others, would typically require Town Meeting approval to exercise. In this instance the Trust is empowered to act in all regards as if the real and personal property were theirs. Similarly, notwithstanding the general rule that at the end of a fiscal year, any funds not expended as part of any budget or revolving accounts reverts back to the general fund, the funds of the Trust stay with the trust.

In addition to the Trust and the by-laws, the AHT should have a set of regulations under which they operate the day to day business operations of the AHT. I have attached a sample set of Regulations which you may wish to consider. Certainly these should be modified to encompass those matters which you believe should be included to assist the members, staff and public when dealing with the AHT and they should be tailored to address the specific needs you believe the AHT has.

As noted previously, the current Trust and the by-law which I have provided, incorporates all of the powers set forth in the statute which the Town can provide to the Trust. In other words, the Trust has the power to deal with all personal property and real property in its own name. That is, the trust has dominion, control and authority over the property which it holds in its name. It has the power to act on that property, within the confines of the applicable governing statutes under which municipalities' act, as it deems necessary to fulfill its stated purpose.<sup>3</sup>

Finally, as I noted in my prior memorandum to the Trust, the Trust is considered a governmental body under a number of circumstances and must follow the general requirements which govern a municipality when buying, selling, leasing, renting and/or maintaining its real property and personal property and managing its finances, unless specifically authorized otherwise in accordance with G.L. c. 44 section 55C.

Additionally for purposes of the Open Meeting Law, G.L. c. 39, §§23A, 23B and 23C, the Trust is a governmental body and must adhere to the requirements thereof. As noted above, for

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<sup>3</sup> Please be sure to review the Operations and Procedures manual concerning sale, disposition and investment of property.

purposes of G.L. c. 30B, the public procurement statute, the Trust must adhere to the requirements of buying, selling, leasing, renting and/or maintaining its real property and personal property. In addition, the Trust must follow the proper procedures for selling land which was designated park or conservation land as set forth in G.L. c. 40 §15A. Finally, when investing its cash, the Trust should follow the requirements of G.L. c. 44 §§, 54, 55 and 55B regarding investments by municipalities.

Given the breadth of the powers provided to the Trust under G.L. c. 44 §55C and because the Trust document incorporates all of those powers without limitation, I have no recommendations for modifying the Trust document, other than as noted above, with regard to amending the Trust at this time.

## **II 2006 Town of Grafton Affordable Housing Plan**

The Town of Grafton Affordable Housing Plan (hereinafter "AHP") was created in February 2006 and approved by the Commonwealth of Massachusetts Department of Housing and Community Development (hereinafter "DHCD") July 27, 2006. Once this approval was received by the Town, the Town may rely on that Plan in order to move forward on receiving certification of compliance with the Plan. The Plan is considered approved for five (5) years from the date of certification and shall be updated or renewed through the full 90 day DHCD review process thereafter. 760 CMR 56.03(4)(e). As a result the Grafton Plan will need to be re-certified on or before July 27, 2011.

The purpose behind the plan, among perhaps others, was to provide affordable housing and at the same time establish a plan by which if the Town were to create a certain number of affordable housing units annually, then the Town would be able to exercise more control over applications presented to the Zoning Board for Comprehensive Permits. At the time the AHP was completed the Subsidized Housing Inventory<sup>4</sup> (hereinafter "SHI") for the Town was 5.27%. As of October of 2008, the most recent SHI available, the Town's SHI was 5.3%. (Attached as Exhibit B) As a result, the numbers and goals expressed in the AHP are still very accurate and the conclusions very relevant. I have provided to you DHCD's guidelines for determining whether or not units should be included on the SHI. (Attached at Exhibit C)

Additionally, the goals and plans are even more important than perhaps three years ago given the impending decennial census which will take place in 2010. The SHI is created based upon all housing units which existed in Grafton in 2000. The affordable housing percentage is that of the whole. However, since 2000, the only number which has changed is the number of affordable units, despite the fact that there have been market rate units created in the past eight years; they are not included in the SHI calculation. In 2010, the Commonwealth will again include all units of housing when determining the percentage of affordable units. It is more likely than not that affordable units were not created at the same rate as market rate units and therefore it is very likely that the Town's SHI number will drop below 5%.

As a result of the above, the more work Grafton can do to encourage and create affordable housing, the closer it will be to achieving the goals as outlined in the AHP. The AHP sets forth

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<sup>4</sup> The subsidized housing inventory (the "SHI") is not limited to housing units developed through issuance of a Comprehensive Permit; it may also include SHI Eligible Housing units developed under M.G.L. chs.40A, c.40R, and other statutes, regulations, and programs, so long as such units are subject to a Use Restriction and an Affirmative Fair Marketing Plan, and they satisfy the requirements of guidelines issued by the Department. 760 CMR 56.03(2)

the overall goal of producing 44 affordable units annually. In 2006 that number was based on 0.75% of the total number of housing units in 2000 which was 5,828. However, in February 2007 DHCD adopted new regulations which allowed a community to receive approval on its AHP at 0.50% of its total number of housing units. 760 CMR 56.03(4)(f). In accordance with DHCD's interpretation of these regulations, the Town need not take any affirmative action on its Affordable Housing Plan in order for the new regulations at .50% to apply. Therefore, this goal would now be 30 units of affordable housing annually. While still a difficult task to achieve, certainly not out of reach if many of the tools recommended in your AHP were to be implemented. With the impending decennial census, since the total number of housing units will certainly go up over the 2000 census number which was 5,820, so will the number of affordable units which will need to be created in order to meet the .50% threshold requirement, despite the drop from .75%.

#### A. Creation of Affordable Housing

The AHP set forth the following recommendations for implementing planning and regulatory reform:

- Adopt inclusionary zoning
- Amend accessory apartment bylaw
- Explore adoption of 40R
- Change permit fee policies
- Review existing LIP Policy
- Consider amending flexible zoning
- Waive property taxes in exchange for deed restrictions
- Encourage wider range of housing options.

From my review of the Town's Zoning By-law it appears as though the only item above which has been implemented is to adopt a 40R district. This is the Fisherville District. None of the other recommendations have been adopted.

Particular attention should be given to inclusionary zoning, flexible development, accessory apartments and encouraging wider range of housing options. The Town could undertake each of these changes through a Special Permit approval process and while encouraging more dense development, still retain control over the actual development itself. It is interesting to note that the existing zoning by-law contains some form of the aforementioned regulatory suggestions, the by-law still "stands in the way" of encouraging development of affordable housing. For example, in section 5.4 of the zoning by-law the town has encouraged business, industrial and office development through incentives by releasing the developer of certain dimensional requirements and the like. This Special Permit provisions is a mere half page long and includes essentially two major categories of requirements. On the other hand section 5.2 which governs special permits for multi family developments includes three pages of requirements and section 5.3 which regulates major residential developments includes eight pages of requirements. While both "allow" relief from the existing dimensional controls, the reality is

that the relief comes at a great cost for no real “bonus” on development. It is clear that the by-law was written to encourage commercial and industrial development and to discourage residential development.

Provisions which would allow for “infill” development of pre-existing illegal lots or non-conforming lots could allow applicants to use property which in the past has been deemed unbuildable. In exchange the Town could control the number of units allowed to exist on the property, and require a long term deed restriction on a certain number of units. In this manner, the Town may end up with two to four family scattered housing through out town as opposed to one large development.

Similarly, there is enough experience around the Commonwealth with inclusionary by-laws and accessory apartment by-laws which could allow the Town to retain control over the development of housing, yet still encourage a developer to provide some percentage of their development as affordable housing. Additionally, the requirement of two acre zoning in most of the residential districts certainly discourages the development of affordable housing. This was noted and discussed in the AHP and still holds true today. As noted above, with the Special Permit process, the Town could retain control over development but still encourage affordable housing development outside of the Comprehensive Permit path.

Finally, the Town could even adopt a by-law which was very specific on its dimensional requirements and affordable housing restrictions and allow some limited number of units to be developed by-right. For example, the by-law could provide that on a pre-existing non-conforming lot which was at least 10,000 square feet and had at least 100 feet of frontage, an owner could build up to a four family unit by right so long as there were 4 parking spaces and it was located in the (X) residential zoning district and an affordable housing restriction in the prescribed form was recorded prior to the issuance of an occupancy permit. This is merely an example, but it shows how specific the Town could be and at the same time encourage someone to build affordable housing without worry of sprawl and uncontrolled development.

The recommendation in the AHP which included adaptive re-use can be an effective tool as well if there are areas in Town which have been abandoned or which have traditionally been slow to sell or lease. Reuse of an old building with mixed use development can sometimes not only provide affordable units, but also encourage needed commercial growth.

There are many more examples of how the zoning by-law could be changed using the major categories as outlined in the AHP. The work to understand the goals of the Town and then draft a by-law is a process which should be undertaken if the AHP were to be implemented. As you are probably aware, the zoning by-law change can be initiated by ten citizens, the zoning board, planning board, the Board of Selectmen or the owner of affected land. I encourage the Trust to work with one or all of those groups in order to move in the direction of adopting some of the suggested changes to the zoning by-law.

One of the strategies for encouraging the creation of affordable housing is the “waiver of property taxes in exchange for deed restrictions”. The Town does not currently have the ability to do this as it violates G.L. c. 60. If this were a method which the Trust wanted to pursue, the Town Meeting would need to adopt a Home Rule Petition which would then require legislative approval.

Finally, the Trust could work with the Town to purchase Town owned land for a nominal amount, and then work with potential developers to create affordable housing. The Trust is likely to have more resources available to it in order to enable such a transaction.

### B. Preservation of Affordable Housing

The Trust is fortunate in today's economy to be able to provide financial assistance to those developers willing to place an affordable housing restriction on a new unit. Similarly, the Trust could use its resources to prevent current affordable housing from being re-categorized to market rate housing. As you are aware many affordable housing restrictions which were placed on properties before two years ago included restrictions which expired at some set point in time, usually 15 to 30 years from inception, these are often referred to as "expiring use restrictions". Today, it is the general rule, supported by regulations, that the affordable housing restriction last long term or in perpetuity. Despite the expiring nature of the early restriction, the Trust could negotiate with a developer to continue with the affordable restrictions. Most of the early affordable units at least required the developer to notify the municipality of the expiration of a restriction. If no notice was required, the Town can create a list of all of its SHI units and research the expiration of the affordable housing restriction. The Trust could then prioritize the units and dates of expiration and work with the developer to continue the affordable housing restriction. This may or may not cost money, but should be researched to determine the likelihood of obtaining a continued restriction.

Similarly, the Trust could work with a developer who currently provides rental housing to obtain an affordable housing restriction on the rental units. A cost for the restriction could be obtained through the use of an RFP. The attractiveness of this option is that if the project is a rental project and 25% of the units are deed restricted all of the units in the project count town the SHI. Again, the Town could research the number of multi-family rental projects and issue an RFP seeking interest in such a scenario.

### C. Conclusion

While the Town has adopted an Affordable Housing Plan which has been certified, said adoption will not prevent comprehensive permits from being filed. Only when the Town meets its annual certification requirements will the Affordable Housing Plan be able to act as a "shield" against unwanted comprehensive permit applications.

The 2006 AHP includes many recommendations which if adopted could help to encourage development of affordable housing. The AHP needs to be updated insofar as the production goal would now be 0.50% or approximately 30 units per year. Additionally, with the adoption of the Fisherville 40R district, one of the recommendations has been completed. This Trust can help to initiate discussion and drafting of proposed by-law changes which would also assist in the achievement of the AHPs Goals. Finally, where the Town may not have resources to provide financial incentives to developers to create affordable housing, the Trust does. Whether it is through the creation of affordable housing or the preservation of affordable housing the Trust can also assist the community in achieving the goals set forth in the AHP.

**Grafton Affordable Housing Trust**  
**Rules and Regulations**

**Outline**

- A. Purpose**
- B. Definitions**
- C. Housing Trust Fund Established**
- D. Board of Trustees**
- E. Eligible Activities**
- F. Conditions**
- G. Amendments to Rules and Regulations**

**A. Purpose:**

The purpose of the Rules and Regulations is to establish methods for operations, conduct of meetings, role of Trustees, election of officers, eligible use of Trust Funds and funding approval process for the Grafton Affordable Housing Trust Fund.

The Rules and Regulations are intended to be supplementary and, where in conflict, subordinate to the Town By-law establishing the Trust Fund and the Declaration of Trust.

**B. Definitions:**

**AFFORDABLE HOUSING:** Decent, safe, sanitary, and appropriate housing that Low- and Moderate-Income Households can own or rent without having to devote more than approximately 30 percent of their gross income for monthly Housing Expenses.

**BOARD OF TRUSTEES:** The Board established pursuant to MGL Ch 44 Section 55 C as adopted on May 7, 2008 by the Town Meeting and the Board of Selectmen, as set forth below and in the Declaration of Trust.

**ELIGIBLE ACTIVITIES:** The housing activities for which the Housing Trust Fund may provide financial support are set forth below in Section E.

**EXTREMELY-LOW INCOME:** Households that have incomes that do not exceed 30 percent of the median income for the Boston PSMA area, as established and defined in the annual schedule published by the U.S. Department of Housing and Urban Development, and adjusted for household size, or such higher income limit as may be established for a local, county, state, or federal housing program.

**GRAFTON AFFORDABLE HOUSING TRUST FUND “Housing Trust Fund”:** The funding source as established by MGL Ch 44 Section 55 C, with the central purpose of providing for the preservation and creation of affordable housing in the Town of Grafton for the benefit of low and moderate-income households.

**LOW-INCOME HOUSEHOLDS:** Households that have incomes that do not exceed 50 percent of the area median income, as established and defined in the annual schedule published by the U.S. Department of Housing and Urban Development, and adjusted for household size, or such higher income limit as may be established for a local, county, state, or federal housing program.

**MODERATE-INCOME HOUSEHOLDS:** Households that have incomes that do not exceed 80 percent of the area median income, as established and defined in the annual schedule published by the U.S. Department of Housing and Urban Development, and adjusted for household size, or such higher income limit as may be established for a local, county, state, or federal housing program.

**TRUST ESTATE:** Assets held by the Trust.

**C. Housing Trust Fund Established:**

1. The Housing Trust Fund was officially established by Town vote on May 8, 2006 and the Affordable Housing Trust Fund BY-law was established by a vote of Town Meeting on May , 2009 and found at \_\_\_\_\_ of the General By-laws. The Trust is recorded in the Worcester County Registry of Deeds at Book 41786 and Page 68.

2. The Board of Trustees shall be responsible for implementing the Housing Trust Fund as set forth in the Declaration of Trust.

**D. Board of Trustees:**

1. The Board of Selectmen and the Trustees signed a Declaration of Trust and recorded said Trust at the Worcester County Registry of Deeds on at Book 41786, Page 68.

2. The Board of Trustees shall manage, make recommendations, and from time to time reevaluate (a) the goals for the Housing Trust Fund; (b) the Housing Trust Fund's operating budget and projected expenditures and revenue; (c) the Housing Trust Fund's funding and award policies and priorities; (d) the Housing Trust Fund's program requirements; (e) the Housing Trust Fund's procedures for disbursing Fund resources; (f) the review of applications for Housing Trust Fund awards; (g) the granting of awards; (h) the monitoring of Eligible Activities funded by the Housing Trust Fund; and (i) the evaluation of Housing Trust Fund activities.

3. Officers. The Officers shall be elected at the annual meeting of the Trust, and shall hold office for one year or until their successors are elected and qualified. Should any office become vacant, the Trust shall elect a successor at the next meeting, and such election shall be for the unexpired term of said office. Officers shall include:

a. Chair. The Chair shall preside at all meetings of the Trust. Except as otherwise authorized by resolution of the Trust, the Chair shall sign all contracts, deeds, and other instruments made by the Trust. At each meeting the Chair shall submit such

recommendations and information as he/she may consider proper concerning the business affairs and policies of the Trust.

b. Vice-Chair. The Vice-Chair shall perform the duties of the Chair in the absence or incapacity of the Chair, and in case of a vacancy in the office of Chair.

c. Treasurer. The Treasurer shall authorize the Town Treasurer to receive and disburse such moneys under the direction of the Trust except as otherwise authorized by resolution of the Trust. The Trust may from time to time qualify, change or cancel any such designation. Any member elected to the office of Treasurer shall serve without compensation other than payment of necessary expenses.

4. Action by the Trustees:

A majority of Trustees may exercise any or all of the powers of the Trustees as set forth in the Trust and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all of the Trustees.

**E. Meetings of the Board of Trustees:**

1. Special Meeting. The Chair may, when he/she deems it expedient, and shall, upon written request of three members of the Trust, call a special meeting of the Trust for the purpose of transacting any business designated in the call. The notice of special meeting will be issued no less than five days in advance of the meeting and may be mailed to each member or sent via email.

2. Annual Meeting. Annual meetings of the Trust shall be held in conjunction with the regular meeting of the Trust in June of each year.

3. Order of Business. At the regular meeting of the Trust, the following shall be the order of business:

- a. Role Call
- b. Reading and approval of the minutes of the previous regular meeting and any intervening special meetings
- c. Committee Reports
- d. Unfinished business
- e. New Business
- f. Adjournment

4. Meeting Minutes. The Chair or his or her designee shall record minutes at each meeting. Minutes shall be sent to each Trustee with the notice and agenda of the next meeting. Minutes shall be accepted or edited by Trust vote at next meeting, and shall be filed with the Trust records.

5. Committees. Standing or temporary committees may be authorized from time to time by majority vote of the Trust.

6. Reporting. At the Annual meeting of the Trust, or other annual date determined by the members, the Chair shall report on the activities of the Trust during the previous year. The Report shall include, at minimum, programmatic and financial activities and an audit of such activities.

## **F. Eligible Activities:**

The following housing-related activities are the types of activities for which resources may be received or expensed for the Housing Trust Fund (all of the following activities must benefit an Extremely Low-, Low- or Moderate-Income household(s)):

- i. Housing production, including, without limitation, new construction, rehabilitation, and adaptive re-use;
- ii. Acquisition, including, without limitation, vacant land, single-family homes, multi-unit buildings, and other existing structures that may be used in whole or part for residential use;
- iii. Home ownership assistance;
- iv. Preservation of existing housing;
- v. Housing-related support services, including home ownership education and financial counseling;
- vi. Capacity grants for not-for-profit organizations that are actively engaged in addressing the Affordable Housing needs of Extremely Low-, Low- and Moderate-Income Households; and
- vii. Any other activity that the Board of Trustees determines would address the Town's Affordable Housing needs and which is consistent with the Trust.

## **G. Conditions:**

The Board of Trustees may impose conditions, restrictions, requirements, or similar instruments, termed "Conditions" to any Housing Trust Fund award.

The Trustees shall endeavor, but are not required as in certain instances such a requirement may not be appropriate, to make every effort to assure that any housing created, improved or assisted hereunder shall include a long term (thirty years or more) affordable housing restriction to be placed upon the parcel so affected and recorded at the registry of deeds.

## **F. Amendments to Rules and Regulations:**

The Trust may amend these Rules and Regulations by majority vote at any meeting of the Trustees. All written rules, regulations, procedures and amendments shall be filed in the Office of the Town Clerk.



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TO: Grafton Affordable Housing Trust  
FR: Lisa L. Mead *LJM*  
DA: July 7, 2009  
RE: Memorandum Three / Trust Strategy Memorandum

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Reference is made to the above captioned matter. In that connection this memorandum sets forth several strategies which the Affordable Housing Trust ("Trust") can employ in order to assist in increasing the amount of affordable housing in Grafton. In particular, this memorandum will discuss the use of Community Preservation funds, local initiative projects, the use of town owned land, deed restrictions and smart growth tools, among others. Prior to discussing these various tools which the Trust has available to it, there are a few preliminary matters which the Trust should consider.

## PRACTICLE STRATEGIES FOR THE CREATION OF AFFORDABLE HOUSING THROUGH THE INITIATIVE OF AN AFFRODABLE HOUSING TRUST

### **I Preliminary Considerations**

Before understanding which tools might be the best tools for the Trust to employ in order to increase the affordable housing available to Grafton residents, the Trust must take stock of what the Town currently offers. Similar to the recommendation in the Affordable Housing Plan, here too it is recommended that the Trust identify what opportunities exist and what opportunities may be created. Namely the Trust should compile a list of the following:

- A. Existing Housing including age, tenure, condition and type, including the ownership status, affordability levels, and expiring use status.
- B. Vacant, underutilized and substandard properties.
- C. Adaptive reuse possibilities
- D. Publicly owned land and buildings, including possible tax title land and buildings.
- E. Areas in the community where new housing would be appropriate, places where zoning changes would be beneficial, zones suited for more growth including more density.

Keeping in mind the goals set forth in the Affordable Housing Plan, the Trust should set goals to which it should aim taking into consideration any constraints or opportunities. As part of this, I would recommend that the Trust establish short term and long term goals, including putting in place mechanisms that allow the Trust to react in a timely manner to opportunities which may present to the Trust, but also review criteria for said opportunities so that the Trust is not merely reacting but taking advantage of opportunities which align with the long term goals. This review should be done on an annual basis.

Finally, because the Trust cannot accomplish this alone, the Trust, as part of its overall goals and strategies should put in place a public information and outreach program. Such a program will not only allow the Trust to build a constituency, but it will also inform people that the Trust exists which may lead to opportunities down the road.

## II Strategies

### A. Community Preservation Funds

The Town of Grafton has established a Community Preservation Committee (“CPC”). As part of the responsibility of the CPC, each year it must allocate a total of 30% of the available revenues of the CPC to affordable housing, open space and historic preservation, with a minimum of 10% to each program.<sup>1</sup> Beyond that required for the minimum funding the CPC may direct the remaining 70% to any of the activity areas allowed by statute. When affordable housing activities warrant appropriation beyond the initial 10%, the CPC could spend the remaining 70% on such activities. In the event the CPC does not appropriate the requisite 10% annually on affordable housing, that amount must be placed aside in a reserve account to be used on affordable housing at a later date. Finally, the CPC is allowed to bond for projects where the annual revenues are not sufficient to pay to the entirety of a project in one year.

CPC funds can be used to create, preserve and support affordable housing such as:

1. *Purchase property outright in fee*: The Trust could acquire a piece of property and/or buildings, and develop the property through the use of an RFP process seeking a developer or the Trust could develop it.
2. *Purchase deed restrictions*: As one part of a funding program for a developer, additional funding could be provided to the project in exchange for deed restrictions being placed on certain units or on the entire project.
3. *Preserve affordable housing by rehabilitating and attaching a deed restriction*: Within the existing housing stock there may be units which need to be improved but for which the owner may not have the funds to make the improvements. The Trust can use CPC funds to provide an owner the

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<sup>1</sup> See generally G.L. c. 44B, Community Preservation Act.

opportunity to rehabilitate the property in exchange for a deed restriction being placed on the property in perpetuity and allowing a qualified renter or buyer to obtain the property.

4. *Site development as part of overall project:* In the event a project would be feasible but for the site development costs, the CPC funds could be used to pay for the site development costs or a portion thereof thereby paving the way for the developer to create the housing. The use of the funds would be in exchange for deed restrictions on the property. Similarly, if a non-profit were developing housing for the disabled, for example, then the CPC funds could be used to bridge the gap for the construction of the project.
5. *Pay for soft costs in order to leverage other funds like CDBG or HOME funds.* In an effort to get a project off the ground, and leverage funds that require a match, CPC funds could be used to fund up front soft costs such as engineering, hazardous material review, permitting and the like. This could allow a developer the opportunity to access other funds as part of an overall funding strategy.
6. *Write down purchase price for qualified buyer and attach deed restriction.* Similar to 1 above, but instead of purchasing the property outright, the funds could be used to assist in the purchase of a market rate unit in order to bring the purchase price down to the 80% requirement. In exchange the unit would have a deed restriction place upon it.

If the Trust has in place a plan and based upon that plan each year the Trust applies for available CPC funds, a significant portion of needed capital will be available to the Trust to assist in fulfilling its goals. The Town of Grafton CPC has set forth in its masterplan its goals for affordable housing which are largely in line with the Affordable Housing Plan. See page 4 of Exhibit 1. Additionally, for ease of reference I have attached the CPC submission form and requirements to seek funding from the CPC. Exhibit 2.

#### B. Local Initiative Projects:

Local Initiative Projects (“LIP”) are affordable units which have resulted from city or town action or approval. LIP units can be created by initiation from the municipality, i.e. the Trust purchases a unit and places a deed restriction<sup>2</sup> on the unit in conformance with the Department of Housing and Community Development (“DHCD”) guidelines. The unit must qualify in all other respects under the LIP program to be placed on the subsidized housing inventory (“SHI”). Alternately a developer may want to undertake a Comprehensive Permit project in a friendly manner and the developer receives prior approval from the Board of Selectmen before applying to the Zoning Board. The municipality and the developer apply to DHCD together in a LIP application. The requirements of a LIP unit are:

1. The units have resulted from municipal action or approval.

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<sup>2</sup> Latest DHCD form attached as Exhibit 3.

2. The units are sold or rented on a fair and open basis and will be subject to affirmative fair marketing and resident selection.
3. The unit sale or rental price is affordable to households at or below 80% of the area median household income.
4. The unit has its long-term affordability secured by a deed restriction approved by DHCD.

Opportunities for LIP projects may exist where developers own land which is less than desirable due to non-compliance with local by-laws, which requires extensive approvals under local by-laws or which may face neighborhood opposition. In such a situation, the Town could approach the developer about a LIP project which would assist in relieving the project from local zoning and other local by law constraints. In this instance a developer may then be willing to move ahead with a Comprehensive Permit development if the Town were supportive of the project.

LIP units do not necessarily require funding from the Trust, but could be aided by the leadership and/or partnership of the Trust with regards to appearances before other permitting or approving boards and commissions. Any of the units created with CPC funds would qualify for LIP status assuming they met the criteria outlined above.

#### C. Negotiated Contributions and/or Inclusionary Zoning Payments

There are alternative revenue sources which individually are not significant but taken in total over a period of time will assist in the growth of the Trust assets. These alternative sources are derived from:

1. *Negotiated payments in conjunction with permitting boards:* The Trust may work with the local permitting boards to encourage them to negotiate payments as part of development projects. For example, where a developer is seeking waivers from certain local by-laws, then perhaps the public good served by said waivers is classified as payments made to the Trust to support affordable housing. Similarly, if a developer were developing a 40B project, or other project requiring a special permit, the Zoning Board may negotiate with the developer a certain payment to be made to the Trust on the sale of each unit.
2. *Proceeds from the sale of inclusionary units:* Where there is a sale of a unit which was designated as an inclusionary unit, but there are no qualified buyers and the unit is sold for market rate, the Town or the Trust should be the beneficiary of the incremental difference between the affordable price and the market price.
3. *Payments in-lieu of inclusionary units:* Where developers are required or given the option of constructing a certain number of affordable units as in section 5.3.13(m) of the Town By-law, the Town may consider changing the zoning by-law to provide the developer with an option of paying a certain amount of money to the Trust in-lieu of constructing the housing.

Ultimately, the Trust may be able to leverage more units out of the donated funds.

4. *Proceeds from sale of municipally owned land or units:* The Trust can work with the Town to determine if there are any pieces of municipally owned land which can be sold the proceeds of which would be paid to the Trust for affordable housing development. Alternatively, if for example the property to be sold includes a former municipal building such as a school, the Town could sell the property to the Trust for nominal consideration and in turn the Trust could sell it to a developer for development of affordable housing.

This area can certainly provide a source of income to the Trust, but in certain instances is a road less traveled and it is recommended that legal assistance is sought prior to “assessing” fees where they do not currently exist in regulation or law. Because a municipality may not impose a tax unless it is specifically authorized to do so, any action the Town of Trust takes in this regard should be well thought out. On the other hand, regardless of the law limiting the authority of the municipality to tax, the municipality may enter into agreements with private parties regarding payments made to the town as part of a development project.

#### D. Smart Growth Tools, Infill Development and Substandard Lots

Many communities overlook opportunities which exist in currently developed areas, thinking that any new development must take place on land yet to be developed. However, with the right zoning by-law provisions or through the use of comprehensive permits or G.L. c. 40R, existing developed areas can be utilized to create new housing opportunities. As part of the Commonwealth’s Sustainable Development Principles (Attached as Exhibit 4) communities are encouraged to reuse and redevelop first on a pre-existing developed site. This is also known as adaptive reuse.

1. *Redevelopment and Renovation:* The concept of redevelopment and renovation includes both infill and mixed use projects. For example, if there is an area in town where a building is no longer useable either through dilapidation or destruction, the community is encouraged to “fill this gap” by reusing or rehabilitating the building with a residential or mixed use project. The result will include the creation of more housing, more commercial space but also increasing the real estate tax value of the parcel.
2. *Infill on Substandard Lots:* Similar to redevelopment of existing sites, if there is a vacant parcel in the middle of a developed area which parcel no longer meets zoning requirements, the Trust is encouraged to rebuild or infill the vacant lot. This strategy would require the Town to adopt zoning which would allow a developer, within certain parameters, to develop substandard lots in exchange for dedicating some portion of the property or development to affordable housing. Not only can this tool be used in a more densely developed commercial or multifamily area, but depending

on the tolerance of the community, potentially in areas where single and two family housing exists.

#### E. Deed Restrictions

Finally, the Trust can employ the use of deed restrictions as part of its efforts to secure more affordable housing. In addition to the methods described above which include the use of deed restrictions to secure affordable units created thereby and assist a developer in undertaking a project, deed restrictions can also be used to enable a property owner to rehabilitate their property. The Trust can undertake to identify substandard rental housing in the community. Thereafter the Trust could issue an Invitation for Bids or a Request for Interest, setting forth a program whereby, to qualified applicants the Trust would award funds for the rehabilitation of the housing in exchange for a deed restriction being placed on a certain number of the units. The result would be improved housing, increased values and more affordable units.

### III Overview

Many of the strategies outlined above can be accomplished within the confines of the existing zoning by-laws; others will need a concerted effort to pass new, affordable housing friendly by-laws; such as allowing use of undersized lots or different inclusionary housing provisions. A pre-requisite to the success of any of these strategies however is communication and education. It is of utmost importance that the Trust makes every effort to inform and educate the public and elected officials about affordable housing and the benefits it provides to a community. Similarly, the Trust will need to be sure its goals are clear so that it can gain buy-in from the community. This of course is of utmost importance with applying for CPC funds and assuring the successful appropriation of those funds at Town Meeting.



# **EXHIBIT 1**

TOWN OF GRAFTON  
COMMUNITY PRESERVATION COMMITTEE

COMMUNITY PRESERVATION  
PROGRAM AND PLAN

Date: December 14, 2004

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## I. Introduction: A Brief Introduction to the Community Preservation Act in Grafton

The Community Preservation Act (the "CPA, MGL: 44B") allows any city or town in the Commonwealth of Massachusetts to adopt a property surcharge with revenues from this surcharge (and state matching funds) devoted to open space, historic preservation, affordable housing, and land for recreational use. The Town of Grafton (the Town) adopted the CPA in May of 2001. The Grafton CPA was established with a 1½% surcharge based upon the property tax. The surcharge went into effect with the start of FY 03 on July 1, 2002.

Consistent with the terms of the CPA and with a bylaw adopted at Grafton's 2001 Semi-Annual Town meeting, a Community Preservation Committee (CPC) was formed to study and recommend to the Town Meeting how Grafton's CPA revenues should be spent. The committee, appointed by the Selectmen and representative committees, currently consists of 4 at-large members and one representative each from the Town's Conservation Commission, Historical Commission, Housing Authority, Planning Board, and Recreation Commission. This is the Town's only inter-agency committee and thus has a very wide scope of represented interests.

The committee was organized in October, 2002 and fully appointed in January 2003. The committee has held regular meetings since October 2002 and immediately proceeded to establish operating policies and principles and to examine projects that would fit with the intent of the CPA.

At Town Meetings the voters are asked to approve the committee's recommendations for funding. No projects can be undertaken without the approval of the Town Meeting.

This document includes a form that may be used to submit ideas for new proposals. Citizens are also welcome to attend meetings of the CPC. Meeting dates and times, and meeting agendas, are posted with the Town Clerk and are also available on the Town Web Site. You may also write to the Committee at CPC, Grafton Municipal Center, 30 Providence Road, Grafton MA 01519.

## II. Motivation

### A. Grafton's Vision Statement

(from the "Town of Grafton Massachusetts 2001 Comprehensive Plan," Page 18):

*GRAFTON is a small town with a strong sense of community made up of historical New England villages and new neighborhoods, whose residents are its most vital asset, where pastoral landscapes are valued, where open space preservation is considered integral to our town's character, and where carefully-planned residential as well as non-residential development enhance the community's economic stability.*

### B. Grafton's Commitment To Community Preservation

For years, Grafton longtime residents and new arrivals have expressed a strong interest in preserving our small town character. The above vision statement was created through a community wide visioning process. The statement affirms the Town's priority on open space, historic preservation, affordable housing, and recreational activities. These themes have been repeated many times in the last years. Open space initiatives had been well supported with the purchase of three large parcels for limited development. Recognizing the need for open space and resource protection, the Grafton Board of Selectmen, Conservation Commission and Planning Board were among the co-nominators of the Miscoe, Warren and Whitehall Area of Critical Environmental Concern (ACEC). This area, which includes 3,000 acres in Grafton, was recognized for its unfragmented and diverse wildlife habitat, rare species habitat, and water quality, as well as its unique and significant historical resources. The Secretary of Environmental Affairs designated this area as an ACEC in July 2000.

Initiatives for historic preservation had been minimal although town citizens recognized the need for preserving such spots as the Town Common, one of the most scenic in the state. Attempts to improve affordable housing had met with little success as demonstrated by the failure of an inclusionary zoning by-law in 2002.

The CPC has carried forth the intention of the original CPA organization to focus its attention on the Town's need for recreational facilities to support Little League baseball and football, soccer, lacrosse, and other recreational activities, recognizing the large gap between needed facilities and availability of existing facilities. It also has looked at historic initiatives that could be funded, recognizing that very little has been done in the past to support this important part of Grafton heritage.

### III. Goals & Needs

#### Assessment Process

Funds collected under the Community Preservation Act can only be spent for four community preservation areas: open space, historic preservation, affordable housing, and land for recreational use. At least 10% of the funds received in any fiscal year must be spent or set aside for each of the first 3 of these areas (open space, historic preservation, affordable housing). The remaining 70% of each year's funds can be spent in any of the four areas, as determined by the needs of the community. However, CPA funds cannot be spent on maintenance or used to supplant funds being used for existing community preservation purposes. Up to 5% of annual revenues can be spent on administrative and operating expenses of the Community Preservation Committee.

To translate the town's vision statement into specifics and determine which projects should be considered, the CPC gathers information and ideas from the Town's Master Plan, Town departments and committees, and town people and organizations knowledgeable about each of the community preservation areas. In addition the CPC has taken note of possible opportunities, which unfolded due to changes in use of town owned facilities and input from various studies underway.

Based upon the information gathered from these sources, we developed an assessment of Grafton's goals and needs in each of the community preservation areas and a list of proposed projects in each of these areas. Some projects are for near-term action; others are still under discussion for the future. This allows the Town and the CPC to do future planning and to integrate the Town's Master Plan into its assessments. Needs outlined in the Town Master Plan are utilized as part of the goal setting process by the CPC.

#### A. Open Space

##### 1. Open Space Resources

Grafton enjoys a variety of open space resources located throughout the Town. It also has the ability to share resources owned by the Grafton Land Trust and made available for public use. These resources include Merriam Road Conservation Area, Brigham Hill Preserve (GLT), Silver Lake, the Great Meadows, the Hennessey and Webber properties, Lake Ripple and surrounding lands of the GLT, and the newly acquired Robinson Property (Hassanamesitt) and the adjacent lands of Oakmont Farms.

##### 2. Open Space Goals

Open Space resources are highly valued by Grafton residents. Grafton has had an Open Space and Recreation Plan since 1978. This has been updated several times, with the latest version being incorporated into the Town's Master Plan of 2001. The following are excerpts from that plan:

## Community Preservation Program And Plan

Preserve Grafton's Town Character

Preserve and enhance Grafton's water resources

Protect and conserve Grafton's land resources

Enhance use of existing recreation and conservation areas

Provide Grafton with varied and geographically balanced recreational facilities and opportunities

### **B. Historic Preservation**

#### **1. Historic Preservation Resources**

Grafton has a number of historic assets, the premier of which is the Town Common and Historic District including the town owned old Town Hall, which is an anchor to the district. Additionally the Old and Indian Cemetery contains many gravestones, which were carved by famous carvers. Old homes on Brigham Hill, South Street, North Street, and Oak Street add to the charm of the Town Common. There are several churches, which abut the common and date back to the 1700s. The Willard House and Clock Museum, a privately owned museum, attracts many visitors from out of Town and hosts several historic programs each year. Hassanamesitt, site of an Indian Praying Village, provides unique insight into the history of earlier inhabitants of this area.

The heritage of Grafton is deeply rooted in the mill villages established along the Blackstone and Quinsigamond Rivers during the Industrial Revolution. The villages are in danger of losing their character as these areas become redeveloped. The historic Blackstone Canal, which passes through South Grafton, is recognized as a resource of regional and national significance.

#### **2. Historic Preservation Goals**

The Town's Master Plan, Historic Commission, and District Commission have identified the following goals:

Preservation and enhancement of properties of historic, archeological, and cultural significance

Protection of and preservation of the Grafton Common and District

Preservation of important features of the Old and Indian Cemetery

Providing education and community outreach regarding the historic and cultural resources within Grafton through programs, brochures, etc.

Work with the Blackstone Valley National Heritage Corridor to develop programs furthering the preservation of historically important features in Grafton

### **C. Affordable Housing**

#### **1. Affordable Housing Resources**

As of the 2000 census, Grafton had 5820 residential units. At present 294, or 5.05% of Grafton's housing units are classified as affordable "subsidized housing" by the State's Department of Housing and Community Development (DHCD) for the purposes of

## Community Preservation Program And Plan

Chapter 40B. These units are located as follows:

Forest Lane and Maxwell Drive (GHA)	128 units
McHale Drive (GHA)	6 units
Veterans Circle (GHA)	16 units
Forest Lane (GHA)	20 units
<u>Other</u>	<u>124 units</u>
Total	294 units
<u>Additional Needed for 10% Threshold</u>	<u>288 units</u>
	582 units

In addition, one mixed-use condominium development has been permitted by the Grafton Zoning Board of Appeals (ZBA), which includes 260 total units with 20% to be affordable, or an additional 52 units. A highly contested plan for 76 units with 19 affordable units has also been recently approved by the ZBA. This project has many environmental impacts and is being contested by residents in both Housing Appeals Court and Superior Court.

The lack of affordable housing in Grafton is due in part to conditions imposed by the DHCD for long-term affordability documentation. There are units in Center and North and South Grafton, which rent for less than the current standard rental specified by DHCD. However, because they are not subsidized, and are not on an approved program listing, they are not counted. The possibility of additional large-scale Chapter 40B projects is still present.

### 2. Affordable Housing Goals

Encourage housing development patterns that preserve open space and natural features,

Reinforce villages with mixed uses and a variety of housing types

Attain a rate of growth that will neither stifle economic growth nor damage the sense of community

Provide housing options that will allow residents to remain in Town as they age and allow the children of residents to establish families in Grafton

Establish minimum or better production of affordable units at a growth rate of at least .75% (approximately 40) per year.

### D. Recreation

Funding through the Community Preservation Act is limited to the “acquisition, preservation, and creation of land for recreational use”. Acquisition is defined as obtaining by gift, purchase, rental, lease, etc. Preservation is defined as protection from injury, harm, or destruction. The land cannot be used for “a stadium, gymnasium, or similar structure,” but it can be used for “community gardens, trails, and non-commercial youth and adult sports” and for “parks, playgrounds, or athletic fields”.

## Community Preservation Program And Plan

### **1. Recreational Use Land Resources**

Grafton residents enjoy a variety of land resources that support recreational activities. Silver Lake provides swimming and other summer activities. Playing fields support organized sports such as soccer, baseball, football, and lacrosse. The Senior Center in the Municipal Center, just recently opened, houses many activities for seniors with the next-door gymnasium available for walking or basketball or other sports. The Grafton Land Trust holds over 200 acres of protected land available to the public for passive recreation. Lake Ripple, just partially dredged, has excellent fishing including ice fishing and skating in the winter. The Recreation Department runs programs at the parks in the summer and at various facilities during the winter.

In 2003 a Town-hired consultant completed a survey of recreational fields. That survey indicates a distinctive and urgent need for additional recreational sports fields and a need to upgrade existing fields.

### **2. Recreational Goals**

Enhance use of existing recreation and conservation areas

Provide Grafton with varied and geographically balanced recreational facilities and opportunities

## IV. CPC GUIDING PRINCIPLES

To facilitate the process of meeting its goals the CPC has adopted the following Guiding Principles:

1. Protect Grafton's unique character, quality of life, and natural and man-made resources through town-wide planning efforts. This includes gathering data and creative input from all applicable town-sanctioned boards and entities, as well as from private citizens;
2. Plan for development and redevelopment in areas where adequate infrastructure is already available or can be upgraded without causing damage to natural resources;
3. Promote the preservation of open spaces and natural resources including wildlife habitat, water quality and watershed protection, working farms and forests, as part of a long-term economic strategy;
4. Promote new economic development techniques that consider the physical and ecological limitations of our natural resources, such as the ability to provide sufficient water for Grafton's needs, to maintain the quality of all town watersheds and their ability to assimilate pollutants, and to support Grafton's habitats in order to maintain biodiversity;
5. Implement the goals of the Grafton Community Preservation Committee as set forth in Article 34 of the Town of Grafton Bylaws, namely, to acquire, create and preserve open space, historic resources, land for recreational use, and community housing. These activities may also include the rehabilitation and/or restoration of such open space, historic resources, land for recreational use, and community housing;
6. Promote the adoption of policies that encourage developers to select less consumptive land-use patterns.

## V. SELECTION CRITERIA

The Community Preservation Committee requires that all proposed projects be eligible for CPA funding according to the requirements described in the CPA legislation and implementing guidelines (IGR-20-02). In addition, the projects are evaluated using the selection criteria as established in the Selection Criteria Guidelines included as Appendix 2 in this document.

## VI. FUNDED PROJECT STATUS REPORT AND RECOMMENDATIONS

Site #	Project	Sponsor	Type	Cost	Funding Year	Description	Status
1	Eklaw Landing	Roger Hammond/ Grafton Dept. of Public Works	Recreation	\$60,000	2003	There is a piece of property on a river in town that was an old fruit stand and is totally run down. The project will transform the parcel into an entrance into Grafton with a canoe launch. This is a combination recreation and historic project as some of the historic features of the property will be highlighted.	Signage purchased and site work pending Verizon's completion of pole relocation.
2	South Grafton Community Center Structural Study	Grafton Veterans of Foreign Wars	Historic Preservation	\$5,000	2003	For a structural analysis of a historic building in town.	Study completed. Study to be presented to Board of Selectmen before Fall 2004 Town Meeting.
3	Hassanamesitt Woods	Carol Hall/ Trust for Public Land	Open Space	\$500,000	2004	For a 4-year bond to preserve the Hassanamesitt Village, a 200-acre parcel that is believed to be the site of a Praying Indian Village, founded in 1654 by the Rev. John Elliot to Christianize the American Indian population. The land abuts town-owned and other land owned by the Grafton Public Land Trust, and would create 450 acres of contiguous open space.	Land purchased and deeded to the Town of Grafton with appropriate conservation restrictions.

Community Preservation Program And Plan

Site #	Project	Sponsor	Type	Cost	Funding Year	Description	Status
4	Providence Road Field Study	Roger Hammond/ Grafton Recreational Fields Commission	Recreation	\$22,814	2005	For preliminary planning and design studies recreational fields adjacent to 176 Providence Road.	Study underway.
5	Airport Park Field Study	Roger Hammond/ Grafton Recreational Fields Commission	Recreation	\$27,500	2005	For preliminary planning and design studies recreational fields at Bedford Drive/ 4. Airport Drive (Airport Park).	Study underway.
6	Vault Restoration at former Town Hall	John Stephens/ Grafton Historical Commission	Historic Preservation	\$22,174	2005	To renovate the vault at the former Town Hall and install an appropriate climate control system to provide secure storage for Grafton's historical artifacts and archival materials.	Engaging contractor to perform work.
7	Historic gravestone replication	John Stephens/ Grafton Historical Commission	Historic Preservation	\$7,500	2005	For preservation and replication of 3 historically significant 18th century gravestones located in Old and Indian Cemetery with installation of original gravestones on a showcase facility in a town facility.	Engaging contractor to perform work.

Community Preservation Program And Plan

Site #	Project	Sponsor	Type	Cost	Funding Year	Description	Status
8	Silver Lake weed barrier.	Paul Vigeant/ Grafton Conservation Commission	Open Space	\$16,800	2005	To purchase and install aquatic weed control materials at Silver Lake.	Weed barrier purchased and installed under budget. \$6,300 of excess appropriation returned.
	Interpretative signage for preserved open space.	Ed Hazzard/ Grafton Land Trust	Open Space	\$10,000	2005	For design and construction of interpretative signs at up to 5 areas of open space where the Town has a beneficial interest.	Money being held to provide resource for acquisition of matching funds to complete the intended scope of the project.
	Dog Park	Grafton Friends of the Dog Park	Recreation/ Open Space	\$10,000	2005	Funds to purchase and install fencing around a dog park at a TBD location. Plan to use this as leverage to obtain some Town Owned land to lease for this use.	Warrant article voted down at Town Meeting.

## VII. FINANCIALS

<b>SOURCE OF FUNDS</b>					
	<u>Local Collections</u>	<u>*State Match of Prior Year</u>	<u>Earnings on Investment</u>	<u>Total</u>	
As of 6/30/2004	\$287,036	\$118,427	\$13,112	\$418,575	
FY2005 **	\$171,123	\$118,427	\$12,180	\$301,730	
<b>Total</b>	<b>\$458,159</b>	<b>\$236,854</b>	<b>\$25,292</b>	<b>\$720,305</b>	
<b>APPROPRIATED FUNDS</b>					
	<u>Open Space &amp; Recreation</u>	<u>Community Housing</u>	<u>Historic Preservation</u>	<u>Operating Expenses</u>	<u>Total</u>
ATM 2003 (Special and Annual)***	\$54,866		\$5,000	\$5,100	\$64,966
ATM 2004 (Special and Annual)	\$212,114		\$29,674	\$14,850	\$256,638
<b>Total</b>	<b>\$266,980</b>		<b>\$34,674</b>	<b>\$19,950</b>	<b>\$321,604</b>
<b>FUNDS CARRIED FORWARD</b>					
Funds Carried Forward					\$398,701
Returned Appropriations****					\$11,242
Balance Forward (includes Reserves)					\$409,943
<b>RESERVES*****</b>					
	<u>Open Space &amp; Recreation</u>	<u>Community Housing</u>	<u>Historic Preservation</u>	<u>Total</u>	
Prior Years Reserves Carried Forward		\$38,185		\$38,185	
<b>RECOMMENDATION FOR APPROPRIATION</b>					
	<u>Open Space &amp; Recreation</u>	<u>Community Housing</u>	<u>Historic Preservation</u>	<u>Operating Expenses</u>	<u>Total</u>
<b>Recommended Projects</b>					
Farnumsville Firehouse			\$1,500		\$1,500
Development Plan within SG Villages	\$10,000				\$10,000
Development of Affordable Housing Plan		\$10,000			\$10,000
Interpretive Sign at Norcross Park			\$7,000		\$7,000
<b>Total Recommended Projects</b>	<b>\$10,000</b>	<b>\$10,000</b>	<b>\$8,500</b>	<b>\$0</b>	<b>\$28,500</b>
<b>FY05 Reserve Addition</b>	<b>\$28,985</b>	<b>\$28,985</b>	<b>\$28,985</b>		<b>\$86,955</b>
<b>Funds Remaining After Recommended Appropriations (includes reserves)</b>					<b>\$381,443</b>
<i>Funds Remaining After Recommended Appropriations does not include the second of four bond payments (\$135,000) due on Hassanamesitt Woods Project. Approval for this payment will be sought ATM May 2005.</i>					
<b>NOTES</b>					
* State Match is received on a year lag; match for FY03 surcharge was received in FY04.					
** FY2005 State Match Revenue is based on FY2004 actual revenue.					
*** ATM = At Town Meeting.					
**** Returned Appropriations result when projects are completed under budget. \$11,242 is comprised of \$4,742 of FY04 administration expenses and \$6,300 from Weed Control Project at Silver Lake.					
***** Prior to the tax rate being set, 10% of the estimated FY revenue (surcharge plus state match) must be reserved in each of the three categories.					

## Appendix 1 List of References

### A. Hard Copy Resources

Massachusetts General Laws Chapter 267 of 2000 - AN ACT RELATIVE TO COMMUNITY PRESERVATION. - CHAPTER 44B. COMMUNITY PRESERVATION.

Town of Grafton Master Plan – Available at Grafton Public Library and Grafton Town Clerk's Office

### B. Electronic Resources (WWW)

Executive Office of Environmental Affairs, Community Preservation Initiative – <http://commpres.env.state.ma.us/>

Department of Revenue Informational Guideline Releases and Bulletins IGR No. 01-207 and 00-209 -- <http://www.mass.gov/dls/PUBL/igrindex.htm>; September, 2001 and December 2000 -- <http://www.mass.gov/dls/PUBL/bullidx.htm>

Secretary of State, Guide to Local Acceptance of the Community Preservation Act – <http://www.mass.gov/sec/ele/>

Community Preservation Coalition -- <http://www.communitypreservation.org>

Trust for Public Land, Status of Community Preservation Act Implementation and other Resources -- <http://www.tpl.org>

National Park Service, Secretary of the Interior's Standards for the Treatment of Historic Properties -- [http://www2.cr.nps.gov/tps/standguide/overview/choose\\_treat.htm](http://www2.cr.nps.gov/tps/standguide/overview/choose_treat.htm)

Department of Housing and Community Development-- <http://www.mass.gov/dhcd/>

## Appendix 2 Project Submission Guidelines

### TOWN OF GRAFTON COMMUNITY PRESERVATION COMMITTEE

#### **Guidelines for Project Submission**

- 1) Project requests must be submitted in writing (10 copies) to the Community Preservation Committee.
- 2) Requests must include a statement of need and be documented with appropriate support information. The use of maps, visual aids and other supplemental information is encouraged.
- 3) Obtain quotes for project costs whenever possible. If not available, estimates may be used provided the basis of the estimate is fully explained.
- 4) If the request is part of a multi-year project, include the total project cost and allocations.
- 5) For applicants that have multiple project requests, please prioritize projects.
- 6) Requests must be received at least three months prior to the spring or fall semi-annual Town Meeting. Complex projects may need more advance time.
- 7) Applicants must be present at a CPC meeting to answer questions. The CPC meets the second Tuesday of each month.

Please keep in mind that there are legal limitations on the use of CPA funds. Additional information on the CPA and the Community Preservation Committee can be found at [www.communitypreservation.org](http://www.communitypreservation.org). The committee can be reached through Chairman Frank Bartucca. Frank's work telephone number is (508) 234-6333 and his residence is (508) 839-9030. If you are in doubt about your project's eligibility you are encouraged to submit an application so that the Committee can determine eligibility.

Please submit the project proposal and accompanying documentation to:

Community Preservation Committee  
Grafton Municipal Center  
30 Providence Road  
Grafton, MA 01519

Revised February 10, 2004

TOWN OF GRAFTON COMMUNITY PRESERVATION COMMITTEE

**General Criteria**

The Grafton Community Preservation Committee will give preference to proposals which address as many of the following general criteria as possible:

- Are eligible for Community Preservation Act (CPA) funding according to the requirements described in the CPA legislation; specifically,
  - The acquisition, creation, and preservation of open space.
  - The acquisition, preservation, rehabilitation, and restoration of historic resources.
  - The acquisition, creation, and preservation of land for recreational use.
  - The creation, preservation, and support of community housing (including items such as annual payments to the housing authority to preserve or expand the affordable housing supply).
  - The rehabilitation and restoration of open space, land for recreational use, and community housing that is acquired or created using monies from the fund.
- Is consistent with the current Master Plan and other planning documents that have received wide scrutiny and input and have been adopted by the town;
- Preserve the essential character of the town as described in the Master Plan;
- Save resources that would otherwise be threatened and/or serve a currently underserved population;
- Either serve more than one CPA purpose (especially in linking open space, recreation and community housing) or demonstrate why serving multiple needs is not feasible;
- Demonstrate practicality and feasibility, and demonstrate that they can be implemented expeditiously and within budget;
- Produce an advantageous cost/benefit value;
- Leverage additional public and/or private funds;
- Preserve or utilize currently owned town assets; and
- Receive endorsement by other municipal boards or departments.

## Category Specific Criteria

**Open space** proposals which address as many of the following specific criteria as possible will receive preference:

- Permanently protect important wildlife habitat, including areas that
  - are of local significance for biodiversity;
  - contain a variety of habitats, with a diversity of geologic features and types of vegetation;
  - contain a habitat type that is in danger of vanishing from Grafton; or
  - preserve habitat for threatened or endangered species of plants or animals.
- Preserve Grafton's rural and agricultural character.
- Provide opportunities for passive recreation and environmental education.
- Protect or enhance wildlife corridors, promote connectivity of habitat or prevent fragmentation of habitats.
- Provide connections with existing trails or potential trail linkages.
- Preserve scenic views.
- Border a scenic road.
- Protect drinking water quantity and quality.
- Provide flood control/storage.
- Preserve important surface water bodies, including wetlands, vernal pools or riparian zones.
- Preserve a primary or secondary priority parcel in the Open Space Plan.

**Historical** proposals which address as many of the following criteria as possible will receive preference:

- Protect, preserve, enhance, restore and/or rehabilitate historic, cultural, architectural or archaeological resources of significance, especially those that are threatened;
- Protect, preserve, enhance, restore and/or rehabilitate town-owned properties, features or resources of historical significance;
- Protect, preserve, enhance, restore and/or rehabilitate the historical function of a property or site;
- Project is within a Grafton Historic District, on a State or National Historic Register, or eligible for placement on such registers, or on the Grafton Historic Properties Survey;
- Project demonstrates a public benefit; or
- Project demonstrates the ability to provide permanent protection for maintaining the historic resource.

## Community Preservation Program And Plan

**Affordable Housing** proposals which address as many of the following criteria as possible will receive preference:

- Contribute to the goal of achieving 10% affordable housing;
- Promote a socioeconomic environment that encourages a diversity of income, ethnicity, religion and age;
- Provide housing that is harmonious in design and scale with the surrounding community;
- Intermingle affordable and market rate housing at levels that exceed state requirements for percentage of affordable units;
- Ensure long-term affordability;
- Promote use of existing buildings or construction on previously-developed or Town-owned sites;
- Convert market rate to affordable units; or
- Give priority to local residents, Town employees, and employees of local businesses.

**Recreation** proposals which address as many of the following criteria as possible will receive preference:

- Support multiple active and passive recreation uses;
- Serve a significant number of residents;
- Expand the range of recreational opportunities available to Grafton residents of all ages;
- Jointly benefit Conservation Commission and Park and Recreation Commission initiatives by promoting a variety of recreational activities;
- Maximize the utility of land already owned by Grafton (e.g. school property); or
- Promote the creative use of railway and other corridors to create safe and healthful non-motorized transportation opportunities.

## GRAFTON COMMUNITY PRESERVATION COMMITTEE

### Funding Rating Criteria

The project must meet all the legal criteria of the Community Preservation Act. The project must be well documented and provide sufficient information to be feasible. The following criteria will be considered as the project is evaluated. However, meeting all of the criteria does not guarantee CPC support for the project.

Check each line as it applies:

- 1) Does the project have other sources of funding? If so, indicate percentage.
- 2) Does the project require urgent attention?
- 3) Does the project serve a currently underserved population?
- 4) Does the project preserve a threatened resource?
- 5) Is the project consistent with existing Grafton Planning Documents such as the Master Plan or Open Space Plan?
- 6) Does the project fit within the current or already proposed zoning regulations?
- 7) Does the project have a means of support for maintenance and upkeep?
- 8) Does the project involve currently owned municipal assets?
- 9) Does the project have two other sources of funding?
- 10) Does the project have more than two other sources of funding?
- 11) Does the project involve two core concerns of the CPA?
- 12) Does the project involve all three-core concerns of the CPA?
- 13) Does the project have community support?
- 14) Does the project have sufficient supporting documentation?
- 15) Does the project have support from another Board or Committee?
- 16) Does the project provide a positive impact to the community?
- 17) Does the project have the support of the majority of immediate abutters?
- 18) Does the project reclaim abandoned or previously developed lands?
- 19) Does the project require special permitting?

## Open Space Criteria for Parcel Selection

Check each line as it applies to the parcel of land under consideration:

- 1) Is it within a delineated wellhead protection area (Zone I or Zone II)?
- 2) Would it enhance protection of a wellhead area?
- 3) Is it within Grafton's water protection overlay system?
- 4) Is wetland protection a consideration?
- 5) Is vernal pool protection a consideration?
- 6) Is stream and bank protection an issue?
- 7) Is this an Area of Critical Environmental Concern?
- 8) Is this project within the Natural Heritage Endangered Zone?
- 9) Would this proposal contribute to a Greenway?
- 10) Would this proposal contribute to forested land?
- 11) Would this proposal enhance protection of any FEMA designated floodway?
- 12) Will this purchase protect other parcels?
- 13) Does this parcel abut protected land?
- 14) Does this parcel support a significant wildlife habitat?
- 15) Is this parcel at risk for development?
- 16) Is this parcel listed for sale?
- 17) Did this parcel have a past proposal for development?
- 18) Are grants available? If so has application been made?
- 19) Is there a historic significance to this parcel?
- 20) Are there any old foundations located in this parcel?
- 21) Are stone walls located within this parcel?
- 22) Does this parcel house any old roads, trails, cart paths, or scenic vistas?
- 23) Are there any active or passive recreation possibilities associated with this parcel?
- 24) Is this parcel suitable for a community garden or farm?
- 25) Is this parcel suitable for nature observation and educational programs?

## Historic Preservation Selection Criteria

Check each line as it applies:

- 1) Is the building on the National Register of Historic Places?
- 2) Is the property eligible for listing on the National Register of Historic Places?
- 3) Is the property on the State Historic Register?
- 4) Is the property eligible for listing on the State Historic Register?
- 5) Has the property been included in the local Survey of Historic Properties?
- 6) Is the property in danger of being demolished?
- 7) Are there potential archeological artifacts at the site?
- 8) Has the property been noted in published histories of the town or county?
- 9) Is there a realistic chance of restoring the property?
- 10) Are there other potential uses for the property, which could benefit the town?
- 11) Could the building be converted for affordable housing use while still retaining its' historic quality?
- 12) Is the property part of an historic area or district in the town?
- 13) Is the owner also interested in preserving the historic integrity of the property?
- 14) Is there an opportunity for other matching funding to preserve the property?  
Explain
- 15) Are there any particularly important historic aspects about the property?
- 16) Was a known architect of the era involved in the design of the structure?
- 17) Did the property ever play a documented role in the history of the town?

## Affordable Housing Selection Criteria

Check each line as it applies:

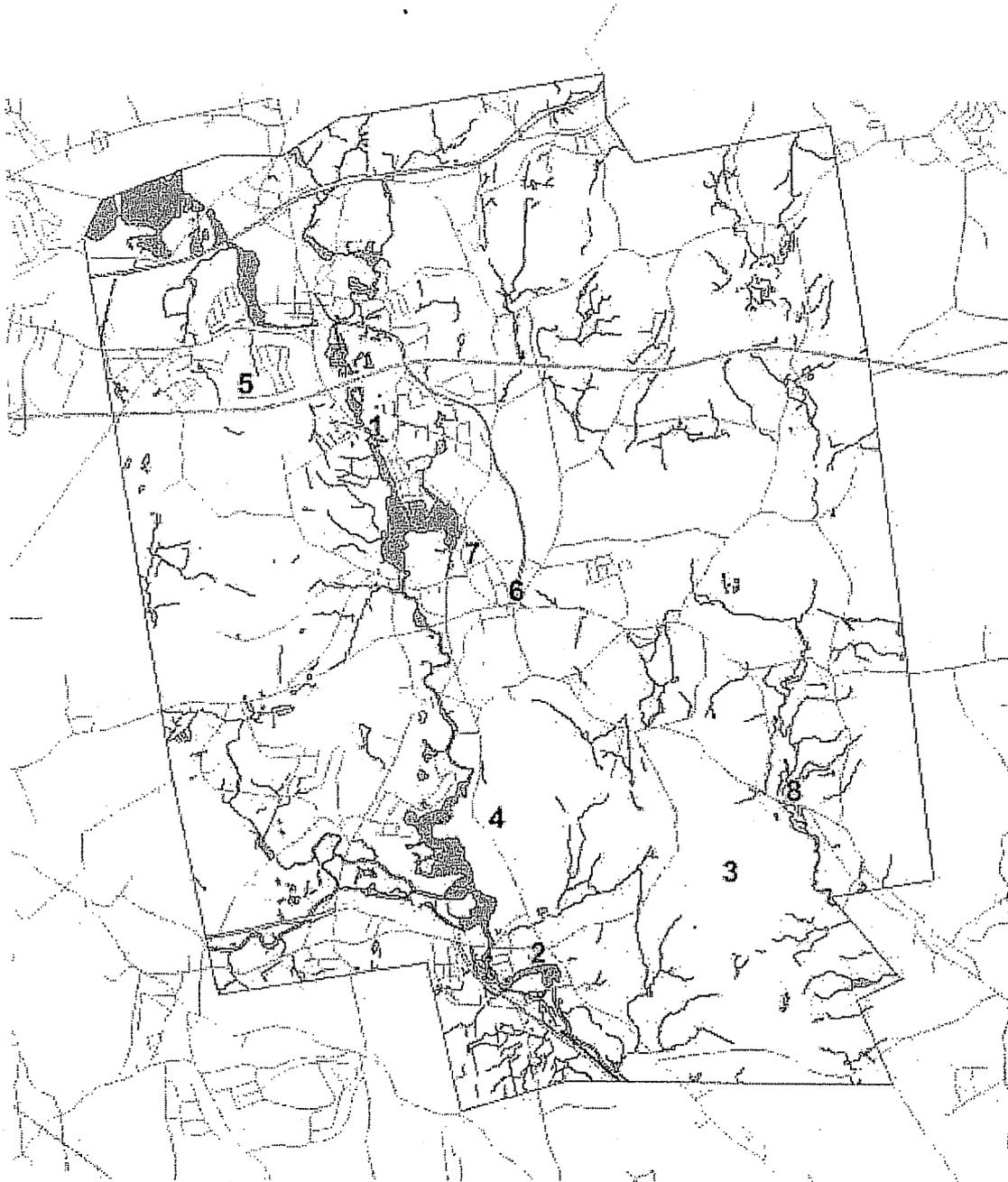
- 1) Will this involve the renovation of an existing building? If so,
  - Is the building structurally sound?
  - Is it free of lead paint? (This would be necessary if children are to live there).
  - Is it free of asbestos, pollutants, and other hazards?
  - Is there Town sewerage?
  - Is the septic system in compliance with Title 5?
  - Does the building comply with building and sanitary codes?
  - Is it handicap accessible?
  - Is this a conversion of market rate to affordable housing?
  - Is this a tax title property?
- 2) Does this project involve the building of a new structure? If so,
  - Will the structure be built on tax title property?
  - Will it be built on Town owned land?
  - Will it be built on donated land?
  - Are there other grants available to help fund this project? Explain.
  - Are there other programs such as Habitat for Humanity involved?
  - Will the project be built on a previously developed site?
- 3) Does the project provide housing that is similar in design and scale with the surrounding community?
- 4) Does this serve the 60% income level population?
- 5) Does this serve the 80% income level population?
- 6) Will this be geared to one age group?
- 7) Is this infill development?
- 8) Will there be more than two bedrooms?
- 9) Will it be located near conveniences (grocery, mass transit, etc.)?
- 10) Does this project fit with the Master Plan?
- 11) Will there be multiple units?
- 12) Is long term affordability assured?
- 13) Will priority be given to local residents, Town employees, or employees of local businesses?

## Recreation Criteria for Rating CPC Proposals

Check each line as it applies:

- 1) Will the project be used by more than one age group?
- 2) Can the project be used by more than one activity (multiuse)?
- 3) Does the project require maintenance costs of less than \$1000 per year?
- 4) Does the project require maintenance costs of less than \$500 per year?
- 5) Would more than 12 participants normally use the project at once?
- 6) Would more than 20 participants normally use the project at once?
- 7) Is this project the first of its kind in the town?
- 8) Is this project the first of its kind in the county?
- 9) Can the project be used by the participants unsupervised by an adult?
- 10) Are grants available to help pay for the construction?  
If so, has application been made for the grant? \_\_\_\_\_
- 11) Can at least 10% of the cost be done by "In Kind Services"?
- 12) Can at least 25% of the cost be done by "In Kind Services"?
- 13) Does the project include considerations for additional parking?
- 14) Can the project be used more than 1 of the 4 seasons per year?
- 15) Does the project match the surrounding areas looks?
- 16) Does the project include all normal safety considerations?
- 17) Does the project meet all building and safety codes?
- 18) Is the project accessible by pedestrians? \_\_\_\_\_ Cars? \_\_\_\_\_
- 19) Does the project take advantage of connections to other resources?

## Appendix 3 CPC Site Locations



See table in Section VI *Funded Project Status Report And Recommendations* for site numbers.

## **EXHIBIT 2**



**TOWN OF GRAFTON**  
GRAFTON MEMORIAL MUNICIPAL CENTER  
30 PROVIDENCE ROAD  
GRAFTON, MASSACHUSETTS 01519

**COMMUNITY PRESERVATION COMMITTEE**

**Guidelines for Project Submission**

1. Project requests must be submitted in writing (10 copies) to the Community Preservation Committee.
2. Requests must include a statement of need and be documented with appropriate support information. The use of maps, visual aids and other supplemental information is encouraged.
3. Obtain quotes for project costs whenever possible. If not available, estimates may be used provided the basis of the estimate is fully explained.
4. Requests must be received at least three months prior to the spring or fall semi-annual Town Meeting. Complex projects may need more advance time.
5. If the request is part of a multi- year project, include the total project cost and allocations.
6. For applicants that have multiple project requests, please prioritize projects.
7. Applicants must be present at a CPC meeting to answer questions. The CPC meets the second Tuesday of each month.

Please note that there are legal limitations on the use of CPA funds. Additional information on the CPA and the Community Preservation Committee can be found at [www.communitypreservation.org](http://www.communitypreservation.org). If you are in doubt about your project's eligibility you are encouraged to submit an application so that the Committee can determine eligibility.

Please submit the project proposal and accompanying documentation to:

Community Preservation Committee  
Grafton Municipal Center  
30 Providence Road  
Grafton, MA 01519

## **General Criteria**

The Grafton Community Preservation Committee will give preference to proposals which address as many of the following general criteria as possible:

- Are eligible for Community Preservation Act (CPA) funding according to the requirements described in the CPA legislation; specifically:
  - The acquisition, creation, and preservation of open space.
  - The acquisition, preservation, rehabilitation, and restoration of historic resources.
  - The acquisition, creation, and preservation of land for recreational use.
  - The creation, preservation, and support of community housing (including items such as annual payments to the housing authority to preserve or expand the affordable housing supply).
  - The rehabilitation and restoration of open space, land for recreational use, and community housing that is acquired or created using monies from the fund.
- Is consistent with the current Master Plan and other planning documents that have received wide scrutiny and input and have been adopted by the town;
- Preserve the essential character of the town as described in the Master Plan;
- Save resources that would otherwise be threatened and/or serve a currently underserved population;
- Either serve more than one CPA purpose (especially in linking open space, recreation and community housing) or demonstrate why serving multiple needs is not feasible;
- Demonstrate practicality and feasibility, and demonstrate that they can be implemented expeditiously and within budget;
- Produce an advantageous cost/benefit value;
- Leverage additional public and/or private funds;
- Preserve or utilize currently owned town assets; and
- Receive endorsement by other municipal boards or departments.

## Category Specific Criteria

**Open Space** proposals which address as many of the following specific criteria as possible will receive preference:

- Permanently protect important wildlife habitat, including areas that:
  - are of local significance for biodiversity;
  - contain a variety of habitats, with a diversity of geologic features and types of vegetation;
  - contain a habitat type that is in danger of vanishing from Grafton; or
  - preserve habitat for threatened or endangered species of plants or animals.
- Preserve Grafton's rural and agricultural character.
- Provide opportunities for passive recreation and environmental education.
- Protect or enhance wildlife corridors, promote connectivity of habitat or prevent fragmentation of habitats.
- Provide connections with existing trails or potential trail linkages.
- Preserve scenic views.
- Border a scenic road.
- Protect drinking water quantity and quality.
- Provide flood control/storage.
- Preserve important surface water bodies, including wetlands, vernal pools or riparian zones.
- Preserve a primary or secondary priority parcel in the Open Space Plan.

**Historical** proposals which address as many of the following criteria as possible will receive preference:

- Protect, preserve, enhance, restore and/or rehabilitate historic, cultural, architectural or archaeological resources of significance, especially those that are threatened;
- Protect, preserve, enhance, restore and/or rehabilitate town-owned properties, features or resources of historical significance;
- Protect, preserve, enhance, restore and/or rehabilitate the historical function of a property or site;
- Project is within a Grafton Historic District, on a State or National Historic Register, or eligible for placement on such registers, or on the Grafton Historic Properties Survey;
- Project demonstrates a public benefit; or
- Project demonstrates the ability to provide permanent protection for maintaining the historic resource.

**Affordable Housing** proposals which address as many of the following criteria as possible will receive preference:

- Contribute to the goal of achieving 10% affordable housing;
- Promote a socioeconomic environment that encourages a diversity of income, ethnicity, religion and age;
- Provide housing that is harmonious in design and scale with the surrounding community;
- Intermingle affordable and market rate housing at levels that exceed state requirements for percentage of affordable units;
- Ensure long-term affordability;
- Promote use of existing buildings or construction on previously-developed or Town-owned sites;
- Convert market rate to affordable units; or
- Give priority to local residents, Town employees, and employees of local businesses.

**Recreation** proposals which address as many of the following criteria as possible will receive preference:

- Support multiple active and passive recreation uses;
- Serve a significant number of residents;
- Expand the range of recreational opportunities available to Grafton residents of all ages;
- Jointly benefit Conservation Commission and Park and Recreation Commission initiatives by promoting a variety of recreational activities;
- Maximize the utility of land already owned by Grafton (e.g. school property); or
- Promote the creative use of railway and other corridors to create safe and healthful non-motorized transportation opportunities.

## **Funding Rating General Criteria**

The project must meet all the legal criteria of the Community Preservation Act. The project must be well documented and provide sufficient information to be feasible. The following criteria will be considered as the project is evaluated. However, meeting all of the criteria does not guarantee CPC support for the project. In addition to filling out the Funding Rating General Criteria, there are individual category rating criteria.

Answer each line as it applies (Yes/ No):

- \_\_\_\_\_ 1.) Does the project have other sources of funding?  
                    If so, indicate percentage: \_\_\_\_\_
- \_\_\_\_\_ 2.) Does the project require urgent attention?
- \_\_\_\_\_ 3.) Does the project serve a currently underserved population?
- \_\_\_\_\_ 4.) Does the project preserve a threatened resource?
- \_\_\_\_\_ 5.) Is the project consistent with existing Grafton Planning Documents such as the  
                    Master Plan or Open Space Plan?
- \_\_\_\_\_ 6.) Does the project fit within the current or already proposed zoning regulations?
- \_\_\_\_\_ 7.) Does the project have a means of support for maintenance and upkeep?
- \_\_\_\_\_ 8.) Does the project involve currently owned municipal assets?
- \_\_\_\_\_ 9.) Does the project have two other sources of funding?
- \_\_\_\_\_ 10.) Does the project have more than two other sources of funding?
- \_\_\_\_\_ 11.) Does the project involve two core concerns of the CPA?
- \_\_\_\_\_ 12.) Does the project involve all three-core concerns of the CPA?
- \_\_\_\_\_ 13.) Does the project have community support?
- \_\_\_\_\_ 14.) Does the project have sufficient supporting documentation?
- \_\_\_\_\_ 15.) Does the project have support from another Board or Committee?
- \_\_\_\_\_ 16.) Does the project provide a positive impact to the community?
- \_\_\_\_\_ 17.) Does the project have the support of the majority of immediate abutters?
- \_\_\_\_\_ 18.) Does the project reclaim abandoned or previously developed lands?
- \_\_\_\_\_ 19.) Does the project require special permitting?

## **Open Space Criteria for Parcel Selection**

Answer each line as it applies to the parcel of land under consideration (Yes/ No):

- \_\_\_\_\_ 1.) Is it within a delineated wellhead protection area?  
          If so, is it Zone I or Zone II? \_\_\_\_\_
- \_\_\_\_\_ 2.) Would it enhance protection of a wellhead area?
- \_\_\_\_\_ 3.) Is it within Grafton's water protection overlay system?
- \_\_\_\_\_ 4.) Is wetland protection a consideration?
- \_\_\_\_\_ 5.) Is vernal pool protection a consideration?
- \_\_\_\_\_ 6.) Is stream and bank protection an issue?
- \_\_\_\_\_ 7.) Is this an Area of Critical Environmental Concern?
- \_\_\_\_\_ 8.) Is this project within the Natural Heritage Endangered Zone?
- \_\_\_\_\_ 9.) Would this proposal contribute to a Greenway?
- \_\_\_\_\_ 10.) Would this proposal contribute to forested land?
- \_\_\_\_\_ 11.) Would this proposal enhance protection of any FEMA designated floodway?
- \_\_\_\_\_ 12.) Will this purchase protect other parcels?
- \_\_\_\_\_ 13.) Does this parcel abut protected land?
- \_\_\_\_\_ 14.) Does this parcel support a significant wildlife habitat?
- \_\_\_\_\_ 15.) Is this parcel at risk for development?
- \_\_\_\_\_ 16.) Is this parcel listed for sale?
- \_\_\_\_\_ 17.) Did this parcel have a past proposal for development?
- \_\_\_\_\_ 18.) Are grants available? If so has application been made?
- \_\_\_\_\_ 19.) Is there a historic significance to this parcel?
- \_\_\_\_\_ 20.) Are there any old foundations located in this parcel?
- \_\_\_\_\_ 21.) Are stone walls located within this parcel?
- \_\_\_\_\_ 22.) Does this parcel house any old roads, trails, cart paths, or scenic vistas?
- \_\_\_\_\_ 23.) Are there any active or passive recreation possibilities associated with this parcel?
- \_\_\_\_\_ 24.) Is this parcel suitable for a community garden or farm?
- \_\_\_\_\_ 25.) Is this parcel suitable for nature observation and educational programs?

## **Historic Preservation Selection Criteria**

Answer each line as it applies (Yes/ No):

- \_\_\_\_\_ 1.) Is the building on the National Register of Historic Places?
  - \_\_\_\_\_ 2.) Is the property eligible for listing on the National Register of Historic Places?
  - \_\_\_\_\_ 3.) Is the property on the State Historic Register?
  - \_\_\_\_\_ 4.) Is the property eligible for listing on the State Historic Register?
  - \_\_\_\_\_ 5.) Has the property been included in the local Survey of Historic Properties?
  - \_\_\_\_\_ 6.) Is the property in danger of being demolished?
  - \_\_\_\_\_ 7.) Are there potential archeological artifacts at the site?
  - \_\_\_\_\_ 8.) Has the property been noted in published histories of the town or county?
  - \_\_\_\_\_ 9.) Is there a realistic chance of restoring the property?
  - \_\_\_\_\_ 10.) Are there other potential uses for the property, which could benefit the town?
  - \_\_\_\_\_ 11.) Could the building be converted for affordable housing use while still retaining its' historic quality?
  - \_\_\_\_\_ 12.) Is the property part of an historic area or district in the town?
  - \_\_\_\_\_ 13.) Is the owner also interested in preserving the historic integrity of the property?
  - \_\_\_\_\_ 14.) Is there an opportunity for other matching funding to preserve the property?
- Explain: \_\_\_\_\_
- \_\_\_\_\_ 15.) Are there any particularly important historic aspects about the property?
  - \_\_\_\_\_ 16.) Was a known architect of the era involved in the design of the structure?
  - \_\_\_\_\_ 17.) Did the property ever play a documented role in the history of the town?

## **Affordable Housing Selection Criteria**

Answer each line as it applies (Yes/ No):

- \_\_\_\_\_ 1.) Will this involve the renovation of an existing building? If so,  
\_\_\_\_\_ Is the building structurally sound?  
\_\_\_\_\_ Is it free of lead paint? (This would be necessary if children are to live there).  
\_\_\_\_\_ Is it free of asbestos, pollutants, and other hazards?  
\_\_\_\_\_ Is there Town sewerage?  
\_\_\_\_\_ Is the septic system in compliance with Title 5?  
\_\_\_\_\_ Does the building comply with building and sanitary codes?  
\_\_\_\_\_ Is it handicap accessible?  
\_\_\_\_\_ Is this a conversion of market rate to affordable housing?  
\_\_\_\_\_ Is this a tax title property?
- \_\_\_\_\_ 2.) Does this project involve the building of a new structure? If so,  
\_\_\_\_\_ Will the structure be built on tax title property?  
\_\_\_\_\_ Will it be built on Town-owned land?  
\_\_\_\_\_ Will it be built on donated land?  
\_\_\_\_\_ Are there other grants available to help fund this project?  
\_\_\_\_\_ Explain: \_\_\_\_\_  
\_\_\_\_\_ Are there other programs, such as Habitat for Humanity, involved?  
\_\_\_\_\_ Will the project be built on a previously developed site?
- \_\_\_\_\_ 3.) Does the project provide housing that is similar in design and scale with the surrounding community?
- \_\_\_\_\_ 4.) Does this serve the 60% income level population?
- \_\_\_\_\_ 5.) Does this serve the 80% income level population?
- \_\_\_\_\_ 6.) Will this be geared to one age group?
- \_\_\_\_\_ 7.) Is this infill development?
- \_\_\_\_\_ 8.) Will there be more than two bedrooms?
- \_\_\_\_\_ 9.) Will it be located near conveniences (grocery, mass transit, etc.)?
- \_\_\_\_\_ 10.) Does this project fit with the Master Plan?
- \_\_\_\_\_ 11.) Will there be multiple units?
- \_\_\_\_\_ 12.) Is long-term affordability assured?
- \_\_\_\_\_ 13.) Will priority be given to local residents, Town employees, or employees of local businesses?

## **Recreation Criteria for Rating CPC Proposals**

Answer each line as it applies (Yes/ No):

- \_\_\_\_\_ 1.) Will the project be used by more than one age group?
- \_\_\_\_\_ 2.) Can the project be used for more than one activity (multiuse)?
- \_\_\_\_\_ 3.) Does the project require maintenance costs of less than \$1000 per year?
- \_\_\_\_\_ 4.) Does the project require maintenance costs of less than \$500 per year?
- \_\_\_\_\_ 5.) Would more than 12 participants normally use the project at once?
- \_\_\_\_\_ 6.) Would more than 20 participants normally use the project at once?
- \_\_\_\_\_ 7.) Is this project the first of its kind in the town?
- \_\_\_\_\_ 8.) Is this project the first of its kind in the county?
- \_\_\_\_\_ 9.) Can the project be used by the participants unsupervised by an adult?
- \_\_\_\_\_ 10.) Are grants available to help pay for the construction?  
If so, has application been made for the grant? \_\_\_\_\_
- \_\_\_\_\_ 11.) Can at least 10% of the cost be done by "In Kind Services"?
- \_\_\_\_\_ 12.) Can at least 25% of the cost be done by "In Kind Services"?
- \_\_\_\_\_ 13.) Does the project include considerations for additional parking?
- \_\_\_\_\_ 14.) Can the project be used more than 1 of the 4 seasons per year?
- \_\_\_\_\_ 15.) Does the project match the look of the surrounding areas?
- \_\_\_\_\_ 16.) Does the project include all normal safety considerations?
- \_\_\_\_\_ 17.) Does the project meet all building and safety codes?
- \_\_\_\_\_ 18.) Is the project accessible by pedestrians? \_\_\_\_\_ cars? \_\_\_\_\_
- \_\_\_\_\_ 19.) Does the project take advantage of connections to other resources?

**EXHIBIT 3**

**LOCAL INITIATIVE PROGRAM**  
**AFFORDABLE HOUSING DEED RIDER**

*For Projects in Which  
Affordability Restrictions Survive Foreclosure*

made part of that certain deed (the "Deed") of certain property (the "Property") from \_\_\_\_\_ ("Grantor") to \_\_\_\_\_ ("Owner") dated \_\_\_\_\_, 200\_. The Property is located in the City/Town of \_\_\_\_\_ (the "Municipality").

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the Deed to the Owner at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was: [check all that are applicable]

- (i)  granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20, 23, from the Board of Appeals of the Municipality or the Housing Appeals Committee and recorded/filed with the \_\_\_\_\_ County Registry of Deeds/Registry District of Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_/Document No. \_\_\_\_\_ (the "Comprehensive Permit");
- (ii)  subject to a Regulatory Agreement among \_\_\_\_\_ (the "Developer"), [ ] Massachusetts Housing Finance Agency ("MassHousing"), [ ] the Massachusetts Department of Housing and Community Development ("DHCD") [ ] the Municipality; and [ ] \_\_\_\_\_, dated \_\_\_\_\_ and recorded/filed with the Registry in Book \_\_\_\_\_, Page \_\_\_\_/as Document No. \_\_\_\_\_ (the "Regulatory Agreement"); and
- (iii)  subsidized by the federal or state government under the Local Initiative Program, a program to assist construction of low or moderate income housing the "Program"; and

WHEREAS, pursuant to the Program, eligible purchasers such as the Owner are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, DHCD (singly, or if more than one entity is listed, collectively, the "Monitoring Agent") is obligated by the Program or has been retained to monitor compliance with and to enforce the terms of this Deed Rider, and eligible purchasers such as the Owner may be required to pay to the Monitoring Agent, or its successor, a small percentage of the resale price upon the Owner's conveyance of the Property, as set out in the Regulatory Agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent and the Municipality serve the public's interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers.

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the Grantor and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by, the Municipality and the Monitoring Agent, and, if DHCD is a party to the Regulatory Agreement and is not the Monitoring Agent, by DHCD.

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund means a fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 44 Section 53A, et seq.

Applicable Foreclosure Price shall have the meaning set forth in Section 7(b) hereof.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.

Area means the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Municipality, as determined by HUD, which in this case is \_\_\_\_\_.

Area Median Income means the most recently published median income for the Area adjusted for household size as determined by HUD. If HUD discontinues publication of Area Median Income, the income statistics used by MassHousing for its low and moderate income housing programs shall apply.

Base Income Number means the Area Median Income for a four (4)-person household.

Chief Executive Officer shall mean the Mayor in a city or the Board of Selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Closing shall have the meaning set forth in Section 5(b) hereof.

Compliance Certificate shall have the meaning set forth in Section 6(a) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Eligible Purchaser means an individual or household earning no more than eighty percent (80%) of Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) and owning assets not in excess of the limit set forth in the Program Guidelines. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income, assets and residency as the Monitoring Agent may require to determine eligibility as an Eligible Purchaser. An Eligible Purchaser shall be a First-Time Homebuyer if required by the Program and as specified in the Regulatory Agreement.

First-Time Homebuyer means an individual or household, of which no household member has had an ownership interest in a principal residence at any time during the three (3)-year period prior to the date of qualification as an Eligible Purchaser, except that (i) any individual who is a displaced homemaker (as may be defined by DHCD) (ii) and any individual age 55 or over (applying for age 55 or over housing) shall not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, owned a home or had an ownership interest in a principal residence at any time during the three (3)-year period.

Foreclosure Notice shall have the meaning set forth in Section 7(a) hereof.

HUD means the United States Department of Housing and Urban Development.

Ineligible Purchaser means an individual or household not meeting the requirements to be eligible as an Eligible Purchaser.

Maximum Resale Price means the sum of (i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (ii) the Resale Fee and any necessary marketing

expenses (including broker's fees) as may have been approved by the Monitoring Agent, plus (iii) Approved Capital Improvements, if any (the original cost of which shall have been discounted over time, as calculated by the Monitoring Agent); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_%) of Area Median Income, as required by the Program) for an Appropriate Size Household could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

Monitoring Services Agreement means any Monitoring Services Agreement for monitoring and enforcement of this Deed Rider among some or all of the Developer, the Monitoring Agent, the Municipality, MassHousing and DHCD.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 7(b) hereof.

Mortgagee shall have the meaning set forth in Section 7(a) hereof.

Program Guidelines means the regulations and/or guidelines issued for the applicable Program and controlling its operations, as amended from time to time.

Resale Fee means a fee of 2% of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of this Deed Rider, including the supervision of the resale process.

Resale Price Certificate means the certificate issued as may be specified in the Regulatory Agreement and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued as may be specified in the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Owner's sale of the Property, as provided herein, for so long as the restrictions set forth herein continue. In the absence of contrary specification in the Regulatory Agreement the Monitoring Agent shall issue the certificate.

Resale Price Multiplier means the number calculated by dividing the Property's initial sale price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser. The Resale Price Multiplier will be multiplied by the Base Income Number at the time of the Owner's resale of the Property to determine the Maximum Resale Price on such conveyance subject to adjustment for the Resale Fee, marketing expenses and Approved Capital Improvements. In the event that the purchase price paid for the Property by the Owner includes such an adjustment a new Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid by the Base Income Number at the time of such purchase,

and a new Resale Price Certificate will be issued and recorded reflecting the new Resale Price Multiplier. A Resale Price Multiplier of \_\_\_\_\_ is hereby assigned to the Property.

Term means in perpetuity, unless earlier terminated by (i) the termination of the term of affordability set forth in the Regulatory Agreement or Comprehensive Permit, whichever is longer; or (ii) the recording of a Compliance Certificate and a new Deed Rider executed by the purchaser in form and substance substantially identical to this Deed Rider establishing a new term.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Owner's household exclusively as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.

3. Restrictions Against Leasing, Refinancing and Junior Encumbrances. The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent, provided that this provision shall not apply to a first mortgage granted on the date hereof in connection with this conveyance from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the Monitoring Agent shall be paid upon demand by Owner to the Municipality for deposit to its Affordable Housing Fund. The Monitoring Agent or Municipality may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the Municipality for deposit to its Affordable Housing Fund. In the event that the Monitoring Agent consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceed the actual carrying costs of the Property as determined by the Monitoring Agent, shall be paid to the Municipality for deposit to its Affordable Housing Fund.

4. Options to Purchase. (a) When the Owner or any successor in title to the Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Owner shall notify the Monitoring Agent and the Municipality in writing of the Owner's intention to so convey the Property (the "Conveyance Notice"). Upon receipt of the Conveyance Notice, the Monitoring Agent shall (i) calculate the Maximum Resale Price which the Owner may receive on the sale of the Property based upon the Base Income Number in effect as of the date of the Conveyance Notice and the Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate together with permissible adjustments for the Resale Fee, marketing expenses and Approved Capital Improvements (as discounted), and (ii) promptly begin marketing efforts. The Owner shall fully cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser and, if so requested by the Monitoring Agent, shall hire a broker selected by the Monitoring Agent to assist in locating an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price after entering a purchase and sale

agreement. Pursuant to such agreement, sale to the Eligible Purchaser at the Maximum Resale Price shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice or such further time as reasonably requested to arrange for details of closing. If the Owner fails to cooperate in such resale efforts, including a failure to agree to reasonable terms in the purchase and sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the lack of cooperation continues, as determined by the Monitoring Agent in its reasonable discretion. In such event, the Monitoring Agent shall give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period.

(b) The Monitoring Agent shall ensure that diligent marketing efforts are made to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above and to enter the requisite purchase and sale agreement. If more than one Eligible Purchaser is located, the Monitoring Agent shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to enter a purchase and sale agreement with Owner and to purchase the Property. Preference shall be given to Appropriate Size Households. The procedure for marketing and selecting an Eligible Purchaser shall be approved as provided in the Regulatory Agreement and any applicable Program Guidelines. If an Eligible Purchaser is located within ninety (90) days after receipt of the Conveyance Notice, but such Eligible Purchaser proves unable to secure mortgage financing so as to be able to complete the purchase of the Property pursuant to the purchase and sale agreement, following written notice to Owner within the 90-day period the Monitoring Agent shall have an additional sixty (60) days to locate another Eligible Purchaser who will enter a purchase and sale agreement and purchase the Property by the end of such sixty (60)-day period or such further time as reasonably requested to carry out the purchase and sale agreement.

(c) In lieu of sale to an Eligible Purchaser, the Monitoring Agent or the Municipality or designee shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase and sale agreement shall be entered, and the purchase shall occur within ninety (90) days after receipt of the Conveyance Notice or, within the additional sixty (60)-day period specified in subsection (b) above, or such further time as reasonably requested to carry out the purchase and sale agreement. Any lack of cooperation by Owner in measures reasonably necessary to effect the sale shall extend the 90-day period by the length of the delay caused by such lack of cooperation. The Monitoring Agent shall promptly give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period. In the event of such a sale to the Monitoring Agent or Municipality or designee, the Property shall remain subject to this Deed Rider and shall thereafter be sold or rented to an Eligible Purchaser as may be more particularly set forth in the Regulatory Agreement.

(d) If an Eligible Purchaser fails to purchase the Property within the 90-day period (or such further time determined as provided herein) after receipt of the Conveyance Notice, and the Monitoring Agent or Municipality or designee does not purchase the Property during said period, then the Owner may convey the Property to an Ineligible Purchaser no earlier than thirty (30) days after the end of said period at the Maximum Resale Price, but subject to all rights and

restrictions contained herein; provided that the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner agrees to execute, to secure execution by the Ineligible Purchaser and to record with the Deed; and further provided that, if more than one Ineligible Purchaser is ready, willing and able to purchase the Property the Owner will give preference and enter a purchase and sale agreement with any individuals or households identified by the Monitoring Agent as an Appropriate Size Household earning more than eighty percent (80%) but less than one hundred twenty percent (120%) of the Area Median Income.

(e) The priority for exercising the options to purchase contained in this Section 4 shall be as follows: (i) an Eligible Purchaser located and selected by the Monitoring Agent, as provided in subsection (b) above, (ii) the Municipality or its designee, as provided in subsection (c) above, and (iii) an Ineligible Purchaser, as provided in subsection (d) above.

(f) Nothing in this Deed Rider or the Regulatory Agreement constitutes a promise, commitment or guarantee by DHCD, MassHousing, the Municipality or the Monitoring Agent that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

(g) The holder of a mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Conveyance Notice.

5. Delivery of Deed. (a) In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the selected purchaser by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Owner to the selected purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the selected purchaser consents to, such consent not to be unreasonably withheld or delayed, (vi) the Regulatory Agreement, and (vii), except as otherwise provided in the Compliance Certificate, a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the selected purchaser, and to record with the deed. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the selected purchaser or the enforceability of the restrictions herein.

(b) Said deed, including the approved Deed Rider, shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the selected purchaser, exercised by written notice to the Owner at least five (5) days prior to the delivery of the deed, at such other place as the selected purchaser may designate in said notice. The Closing shall occur at such

time and on such date as shall be specified in a written notice from the selected purchaser to the Owner, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in Section 4(a) above.

(c) To enable Owner to make conveyance as herein provided, Owner may, if Owner so desires at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the selected purchaser to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the rights herein.

(d) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the selected purchaser.

(e) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date of the execution of the purchase and sale agreement, reasonable wear and tear only excepted.

(f) If Owner shall be unable to give title or to make conveyance as above required, or if any change of condition in the Property not included in the above exception shall occur, then Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition herein required. The Owner shall use best efforts to remove any such defects in the title, whether voluntary or involuntary, and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Owner that such defect has been cured or that the Property has been so restored. The selected purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Owner can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Owner shall, unless the Owner has previously restored the Property to its former condition, either:

(A) pay over or assign to the selected purchaser, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonably expended by the Owner for any partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the selected purchaser a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Owner for any partial restoration.

6. Resale and Transfer Restrictions. (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Owner, or the Owner's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the selected purchaser of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent which Compliance Certificate refers to the Property, the Owner, the selected purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the selected purchaser, which new Deed Rider is identical in form and substance to this Deed Rider.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including the deed rider, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. Survival of Restrictions Upon Exercise of Remedies by Mortgagees. (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Deed Rider, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Deed Rider.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Municipality or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Deed Rider, as set forth below.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed, except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Property by such Ineligible Purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 7, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence

that the conveyance of the Property pursuant to this Section 7 is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider.

(h) The Owner understands and agrees that nothing in this Deed Rider or the Regulatory Agreement (i) in any way constitutes a promise or guarantee by MassHousing, DHCD, the Municipality or the Monitoring Agent that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 7 shall supersede the provisions of Section 4 hereof.

8. Covenants to Run With the Property. (a) This Deed Rider, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, having the benefit of Section 32 of such Chapter 184, and is enforceable as such. This Deed Rider has been approved by the Director of DHCD.

(b) In confirmation thereof the Grantor and the Owner intend, declare and covenant (i) that this Deed Rider, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Municipality, the Monitoring Agent and DHCD and their successors and assigns, for the Term. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.

9. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Grantor:

Owner:

Monitoring Agent[s]

- (1) Director, Local Initiative Program  
DHCD  
100 Cambridge Street  
Suite 300  
Boston, MA 02114

(2)

Others:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

10. Further Assurances. The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the Comprehensive Permit, Program and Program Guidelines, as applicable.

11. Enforcement. (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Municipality and the Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the Municipality and Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Deed Rider;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (iii) if the violation is a sale of the Property to an Ineligible Purchaser except as permitted herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser to purchase or itself purchase the Property from the Ineligible Purchaser on the terms and conditions provided herein, the purchase price shall be a price which complies with the provisions of this Deed Rider; specific performance of the requirement that an Ineligible Purchaser shall sell, as herein provided, may be judicially ordered.
- (iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Compliance Certificate, by an action in equity to enforce this Deed Rider; and
- (v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent and/or the Municipality in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent and the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent and the Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent and/or Municipality fails to enforce this Deed Rider as provided in this Section, DHCD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Deed Rider as the Municipality and Monitoring Agent.

(d) The Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Monitoring Agent and the Municipality the right to take all actions with respect to the Property which the Monitoring Agent or Municipality may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Deed Rider.

12. Monitoring Agent Services; Fees. The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Deed Rider. As partial compensation for providing these services, a Resale Fee [] shall [] shall not be payable to the Monitoring Agent on the sale of the Property to an Eligible Purchaser or any other purchaser in

accordance with the terms of this Deed Rider. This fee, if imposed, shall be paid by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

13. Actions by Municipality. Any action required or allowed to be taken by the Municipality hereunder shall be taken by the Municipality's Chief Executive Officer or designee.

14. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15. Independent Counsel. THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

16. Binding Agreement. This Deed Rider shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Deed Rider.

17. Amendment. This Deed Rider may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent, the Municipality and the holder of any mortgage or other security instrument encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Grantor:

Owner:

By \_\_\_\_\_

By \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT 4**

# Sustainable Development Principles

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



## 1. Concentrate Development and Mix Uses

Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources, and integrates uses. Encourage remediation and reuse of existing sites, structures, and infrastructure rather than new construction in undeveloped areas. Create pedestrian friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open spaces and homes.

## 2. Advance Equity

Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning and decision making to ensure social, economic, and environmental justice. Ensure that the interests of future generations are not compromised by today's decisions.



## 3. Make Efficient Decisions

Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship.



## 4. Protect Land and Ecosystems

Protect and restore environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open spaces and recreational opportunities.



## 5. Use Natural Resources Wisely

Construct and promote developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.



## 6. Expand Housing Opportunities

Support the construction and rehabilitation of homes to meet the needs of people of all abilities, income levels, and household types. Build homes near jobs, transit, and where services are available. Foster the development of housing, particularly multifamily and smaller single-family homes, in a way that is compatible with a community's character and vision and with providing new housing choices for people of all means.



## 7. Provide Transportation Choice

Maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality. Prioritize rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking. Invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with smart growth objectives.



## 8. Increase Job and Business Opportunities

Attract businesses and jobs to locations near housing, infrastructure, and transportation options. Promote economic development in industry clusters. Expand access to education, training, and entrepreneurial opportunities. Support the growth of local businesses, including sustainable natural resource-based businesses, such as agriculture, forestry, clean energy technology, and fisheries.



## 9. Promote Clean Energy

Maximize energy efficiency and renewable energy opportunities. Support energy conservation strategies, local clean power generation, distributed generation technologies, and innovative industries. Reduce greenhouse gas emissions and consumption of fossil fuels.

## 10. Plan Regionally

Support the development and implementation of local and regional, state and interstate plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the Commonwealth.

