

**ASSISTANCE AGREEMENT BY AND BETWEEN  
THE STATE OF CONNECTICUT  
ACTING BY THE DEPARTMENT OF ECONOMIC AND COMMUNITY  
DEVELOPMENT  
(An Equal Opportunity Employer)  
AND  
THE TOWN OF PRESTON**

RE: Preston Riverwalk Brownfield Project-Part II/III

This **ASSISTANCE AGREEMENT** (the "**Agreement**") is made and entered into by and between the **STATE OF CONNECTICUT**, (hereinafter the "**State**"), acting herein by David Lehman, its Commissioner of the Department of Economic and Community Development (hereinafter, the "**Commissioner**" and "**DECD**", respectively), pursuant to Sections 32-763 and 32-765 of the Connecticut General Statutes and the **TOWN OF PRESTON** (hereinafter the "**Applicant**" or "**Contractor**") acting herein by Sandra L. Allyn-Gauthier, its duly authorized First Selectwoman.

**WITNESSETH:**

**WHEREAS**, the governing body of the Applicant has submitted to the State a series of documents including an acceptance letter in response to a Proposal submitted to it by the Commissioner dated September 9, 2021, (the "**Proposal**"), a Project Financing Plan and Budget, with attachments, if any, an Application for Financial Assistance, a resolution from the Applicant's appropriate organizational body authorizing the Applicant to submit said Application, (all, together with this Agreement, hereinafter the "**Project Documents**" and attached hereto as **Exhibit A**) and has caused to have submitted an Opinion of Counsel and other documents for a project entitled *Preston Riverwalk Brownfield Project-Part II/III* (hereinafter the "Project") and has represented to the State that it can rely upon the information within such Project Documents as being accurate and complete; and

**WHEREAS**, the Project as described in the Proposal consists of a pre-conveyance remediation and verification phase ("**Phase A**") and a post-conveyance phase ("**Phase B**"); and

**WHEREAS**, in reliance upon the information submitted by or caused to be submitted by the Applicant, the State has approved funding for the Project; and

**WHEREAS**, the State and the Applicant desire to define the terms and conditions upon which such financial assistance will be made available to the Applicant.

**NOW THEREFORE**, in consideration of the mutual promises of the parties hereto, and of the mutual benefits to be gained by the performance thereof, the State and the Applicant hereby agree as follows:

**ARTICLE 1 - STATE OBLIGATIONS**

1.1. Financial Assistance. The State hereby agrees, subject to the terms of this Agreement and its Exhibits, attached hereto and incorporated into this Agreement, to provide financial assistance to the Applicant for the Project in the form of a Municipal Brownfield Grant in an amount not to exceed SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00) (the “Grant”) and in the form of a loan in the amount not to exceed TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) ( the “Loan”) (hereinafter, the Loan and Grant collectively, the “Funding”). The Loan shall be evidenced by a promissory note (the “Note”) a copy of which is attached hereto as **Exhibit B** and made a part hereof, which Note shall contain the Loan Terms specified in the Proposal.

## ARTICLE 2 - APPLICANT WARRANTIES, COVENANTS, AND OBLIGATIONS

The Applicant represents, warrants and covenants as follows, and further covenants that on and after the closing and for so long as this Agreement or any clause thereof shall remain in effect:

2.1. Form of Entity. The Applicant is a municipal corporation duly created and validly existing under the laws of the State of Connecticut. Further, the Applicant will preserve and maintain its existence as a municipal corporation, duly organized, validly existing, and in good standing under the laws of Connecticut.

2.2. Ability to Conduct Business. The Applicant has all franchises, permits, licenses, and other similar authorizations necessary for the conduct of its business as now being conducted by it, and it is not aware of any state of facts that would make it impossible or impractical to obtain any similar authorization necessary for the conduct of its business as planned to be conducted. The Applicant is not in violation, nor will the transactions contemplated by the Agreement or the Project Documents to which it is a party, cause a violation of the terms or provisions of any such franchise, permit, license, or similar authorization.

2.3. Authorization to Enter Into and Execute Project Documents. The execution and delivery of the Project Documents and this Assistance Agreement by the Applicant, and the performance of its obligations thereunder, are within its power, have been duly authorized by all necessary action on its part, and are not in contravention of law nor in contravention of its organizational documents or governing bylaws , including its charter or of the provisions of any indenture, agreement, or undertaking to which its principals or employees are parties or by which they are bound.

2.4. Other Authorization Unnecessary. No consent, license, or approval from any governmental authority is or will be necessary for the valid execution and delivery by the Applicant of the Project Documents. The Applicant agrees that nothing in the Agreement relieves it from any obligation under law to obtain any such license, consent, or approval.

2.5. Agreement to Undertake Project. The Applicant agrees to undertake and complete the Project as described in the Proposal and Project Documents, attached hereto as **Exhibit A**.

2.6. Obstacles to Entering and Executing Project.

(A) Existing Suit or Other Actions. There is no action, suit, proceeding or investigation at law, in equity, or before any court, public board, arbitrator, or body, pending or, to the Applicant's knowledge, threatened against or affecting it, which could or might adversely affect the Project, any of the transactions contemplated by the Project Documents, the validity of the Project Documents, or the Applicant's ability to discharge its obligations under the Project Documents.

(B) Default of Existing Orders or Instruments. The Applicant is not in default beyond any applicable notice and grace periods with respect to any order of any court, arbitrator, or governmental body which could or might adversely affect the Project, or any of the transactions contemplated by the Project Documents or the validity of the Project Documents, or the Applicant's ability to discharge its obligations under the Project Documents. In addition, the Applicant is not in default beyond any applicable notice and grace periods in the performance, observance or fulfillment of any of the terms, obligations, covenants, conditions, or provisions contained in any agreement or instrument to which the Applicant is a party or to which its property is subject, which default, together with all such defaults, singularly or in the aggregate, may have a materially adverse effect on the business, assets, liabilities, financial condition, results of operations or business prospects of the Applicant.

(C) Instance of Default. No Instance of Default (as defined in Section 4.1 hereof) has occurred or is continuing, and the Applicant has no knowledge of any currently existing facts or circumstances which, with the passage of time or the giving of notice, or both, would constitute an Instance of Default.

## 2.7. Material Adverse Change.

(A) Financial Condition. There has been no material adverse change in the financial condition of the Applicant since the date of application for the Funding that has not been previously disclosed in writing to the Commissioner.

(B) Representations in Documents. All financial statements, including, without limitation, balance sheets and profit and loss statements, delivered to the Commissioner are correct and complete, and fairly present the financial position and results of operations of the Applicant at the times of and for the periods reflected by such financial statements. The financial statements and all other written statements furnished by the Applicant in connection with the Funding do not contain any untrue statement of material fact and do not omit any material fact whose omission would make the statements contained therein or herein misleading.

(C) Other Facts. There is no fact which the Applicant has not disclosed to the Commissioner in writing, which writing, if any, is attached hereto as **Exhibit C**, which materially and adversely affects or, as far as the Applicant can reasonably foresee, is reasonably likely to prove to affect materially and adversely the business, operations, properties, prospects, profits, or condition of the Applicant. Further, the Applicant will notify the Commissioner, in writing, promptly of any material adverse change in the financial condition or business prospects of the Applicant.

2.8. Use of State Funding. The Funding shall be used for the Project as set forth in the Proposal and in accordance with the most recently approved Project Financing Plan and Budget. The Funding shall be used for that purpose and for no other purpose.

(A) Additional Costs Above Funding. Any amount in excess of the amount of the Funding that may be necessary to cover the cost of the Project as set forth in the most recently approved Project Financing Plan and Budget shall be the responsibility of the Applicant and shall not be covered by the Funding. The Applicant shall, as a minimum, provide the level and sources of funding as indicated in the Project Documents, and shall expend those funds in accordance with the Project Financing Plan and Budget.

(B) Budget. The Project Financing Plan and Budget most recently approved by the Commissioner shall constitute the budget for the Project. The Project Financing Plan and Budget may be amended by request of the Applicant if such request is approved in writing by the Commissioner. Approval by the Commissioner of any revised Project Financing Plan and Budget shall not constitute or imply a revision of the amount of the Funding.

2.9. Payment of Other Obligations. The Applicant will pay and discharge promptly when due and payable all taxes, assessments and governmental charges levied or imposed upon it, its property, or any part thereof, or upon its income or profits, or any part thereof, as well as all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon its property, provided that such charges need not be paid while being contested by the Applicant in good faith and by appropriate legal proceedings so long as adequate book reserves have been established with respect thereto and the Applicant's title to, and its right to use, its property is not materially and adversely affected thereby. The Applicant also agrees to pay all taxes or duties levied or assessed upon said sum against the State or the obligation evidenced hereby and to pay all costs, expenses, and attorneys' reasonable fees incurred by the State in any proceeding for the collection of the obligations evidenced hereby upon the happening of an Instance of Default as provided for in the Project Documents or in any litigation or controversy arising from or connected with the Project Documents.

2.10. Indemnification. For purposes of this Agreement, "Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum. "Records" means all working papers and such other information and materials as may have been accumulated by the Applicant in performing this Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form. "Goods" means all things which are movable at the time that this Agreement is effective and which includes, without limiting this definition, supplies, materials and equipment.

(A) The Applicant shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Agreement, including the acts of commission or omission (collectively, the "Acts") of the Applicant or Applicant Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other

professionals' fees, arising, directly or indirectly, in connection with Claims, Acts, or this Agreement. The Applicant shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. The Applicant's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning (i) the confidentiality of any part of or all of the Applicant's bid or proposal, and (ii) Records, intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopied compositions, secret processes, patented or unpatented inventions, or Goods furnished or used in the performance of this Agreement.

(B) The Applicant shall not be responsible for indemnifying or holding the State harmless from any liability solely from the negligence of the State or any other person or entity acting under the direct control or supervision of the State.

(C) The Applicant shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Applicant or any Applicant Parties. The State shall give the Applicant reasonable notice of any such Claims.

(D) The Applicant's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of this Agreement, without being lessened or compromised in any way, even where the Applicant is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims.

(E) This Section shall survive the Termination of this Agreement and shall not be limited by reason of any insurance coverage.

(F) The Applicant hereby agrees to indemnify and hold harmless the State from and against any liabilities, losses, damages, costs, or expenses, including attorneys' fees, arising out of or in connection with the presence of hazardous waste relating to the Project, or any lien or claim under Conn. Gen. Stat. § 22a-452a, as amended, or other federal, state, or municipal statute, regulation, rule, law, or proceeding relating to environmental matters; provided however, this indemnification and hold harmless shall be subject to (i) the provisions of the Purchase and Sale Agreement between the State and the Applicant dated November 2, 2005, and (ii) any other provision of State law to which the Project is or may be subject (e.g., BRRP described in Section 2.19(d) of this Agreement). Such indemnity shall survive payment in full of the Funding, and termination and/or release of the Project Documents.

(G) For purposes of this Agreement, "Contractor Party", "Contractor Parties", "Applicant Party", or "Applicant Parties" shall mean an Applicant's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Applicant is in privity of oral or written contract (e.g., subcontractor) and the Applicant intends for such other person or entity to perform under this Agreement in any capacity. For the purpose of this Agreement, vendors of support services, not otherwise known as human service providers or educators, shall not be considered subcontractors (e.g., lawn care) unless such activity is considered part of a training, vocational or educational program.

2.11. Compliance with Laws, Regulations, Rules, and Executive Orders. In the administration and execution of the Project, the Applicant shall comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Agreement, including, but not limited to, (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Connecticut General Statutes Title 4a concerning State purchasing, including, but not limited to Section 22a-194a concerning the use of polystyrene foam.

2.12. Non-discrimination.

(A) For the purposes of this Section, the following terms are defined as follows:

(1) "Commission" means the Commission on Human Rights and Opportunities;

(2) "Contract" and "contract" include any extension or modification of the Contract or contract;

(3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a

person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Conn. Gen. Stat. § 32-9n; and

(10) “public works contract” means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms “Contract” and “contract” do not include a contract where each contractor is (1) a political subdivision of the State, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, as defined in Conn. Gen. Stat. § 1-267, which, for the avoidance of doubt, includes any federally recognized Indian tribe, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

(B)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status of a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers’ representative of the Contractor’s commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Conn. Gen. Stat. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the

provisions of this Section and Conn. Gen. Stat. § 46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(C) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(D) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(E) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation or a municipal public works contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Conn. Gen. Stat. § 46a-56, as amended; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(F) The Contractor agrees to comply with the statutes and regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(G)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Conn. Gen. Stat. § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to

pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section 2.12 and Conn. Gen. Stat. § 46a-56.

(H) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56, as amended; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(I) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by either (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, or (B) initialing this nondiscrimination affirmation in the following box:

2.13. Executive Orders. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services. If Executive Order 14 is applicable, it is deemed to be incorporated into and made a part of the Agreement as if it had been fully set forth in it. At the Grantee's request, DECD shall provide a copy of these orders to the Grantee.

2.14. Conflict of Interest. The Applicant will adopt and enforce measures appropriate to assure that no member of the Applicant's governing bodies and none of its officers or employees shall have or acquire voluntarily an interest in any agreement or proposed agreement in connection with the undertaking or carrying out of the Project.

2.15. Notification of Instance of Default by Applicant. The Applicant shall notify the Commissioner promptly of the occurrence of any default hereunder or under any of the other Project Documents, or any other document, instrument or agreement to which the Applicant or its

properties are subject and of the actions it intends to take in order to cure such default in a timely manner.

2.16. Representations in Other Documents. All statements contained in any certificate, financial statement, legal opinion or other instrument delivered by or on behalf of the Applicant pursuant to or in connection with this Agreement shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made at and as of the date of this Agreement, and at and as of the date of receipt of the Funding. All representations and warranties made under this Agreement shall survive the execution and delivery hereof and shall not be deemed to have been waived by any investigation made or not made by the State. The Project Documents to which the Applicant is a party, when delivered, will be legal, valid, and binding obligations of the Applicant, enforceable against it in accordance with their respective terms.

2.17. Negative Pledge. The Applicant agrees that it will execute a Negative Pledge and Agreement (“**Negative Pledge**”) to be recorded on the land records of the Town in a form acceptable to the Commissioner, which Negative Pledge shall provide that, for a period of 15 years, the Applicant shall not sell, lease, transfer, assign, or in any way encumber or otherwise dispose of the Applicant’s property (the “**Subject Property**”), located at 14,16,19,54,102.107 and 111 Route 12, Preston, Connecticut, known as the Norwich State Hospital, in whole or in part, except to the Mohegan Tribal Gaming Authority (currently, d/b/a Mohegan Gaming and Entertainment) (“**MTGA**”) or an SPE Affiliate (as defined in the Property Disposition and Development Agreement dated April 19, 2017 between the Applicant and MTGA, as amended or amended and restated from time to time (the “**PDDA**”) pursuant to the PDDA, without first obtaining the written consent of the Commissioner or unless such dispositions are permitted in the PDDA. The Negative Pledge shall further provide that no consent of the Commissioner shall be required for and shall not be applicable to, any environmental use restrictions (“**EURS**”), including but not limited to EURS involving engineered controls (“**ECs**”), imposed as contemplated herein, or any conveyance to MTGA or an SPE Affiliate or following such conveyance, permitted transfers, liens and encumbrances contained in the PDDA. The Negative Pledge shall be released upon such conveyance by the Applicant to MTGA, an SPE Affiliate of MTGA or a project development participant pursuant to the PDDA. Any prior Negative Pledge encumbering the Property shall be released at the time this Agreement is executed.

2.18. Use Restriction. The Applicant covenants and agrees that the Subject Property shall be used in accordance with the uses specified in the PDDA, as amended or as amended and restated, or similar uses including residential, commercial, retail, office, housing and related activities for ten years after the Remediation Project is completed. The Applicant agrees that it shall execute a Declaration of Restrictive Covenant (the “**Covenant**”) in a form acceptable to the Commissioner, which shall be filed on the land records of the Town of Preston. The Covenant shall be enforceable by the State and shall provide that any conveyance of Applicant’s property, other than to MTGA, an SPE Affiliate of MTGA or a project development participant pursuant to the PDDA, shall be subject to the terms of the Covenant. The Covenant shall be released following any such conveyance by the Applicant to MTGA, an SPE Affiliate of MTGA or a project development participant pursuant to the PDDA.

## 2.19 Environmental Compliance.

- (a) The disbursement of state funds may be subject to the completion of the appropriate Connecticut Environmental Policy Act (“CEPA”) review of project activities. It is noted that a Notice of Scoping was published on July 19, 2016 on the Connecticut Environmental Quality (CEQ) Monitor. DECD concluded that the Project does not require the preparation of an Environmental Impact Evaluation study under CEPA. There is no additional obligation required under CEPA for this phase of the Project. DECD’s conclusion was documented at a Post-scoping Notice published on the QEC Monitor on November 8, 2016.
- (b) As determined by DECD, the environmental site assessments, survey, reports and remedial action plans will be prepared for real property subject to project activities. One or more professionals and/or firms licensed to practice in the State of Connecticut (“LEP”) shall prepare the reports. The scope of investigations and report shall conform to the applicable Department of Energy and Environmental Protection (“DEEP”) regulations and guidance, and/or the applicable American Standards for Testing Materials document standards. Copies of all reports shall be made available to DECD.
- (c) If the Applicant and/or other parties for the subject properties within the project area have conducted Environmental Site Assessments, copies of such documents must be submitted to DECD.
- (d) The Project Site was enrolled into the Brownfield Remediation and Revitalization Liability Relief Program (BRRP) by DECD in consultation with DEEP on November 28, 2011 according to the provisions of C.G.S. Section 32-769. The Applicant’s/MTGA’s LEP will prepare and submit to DEEP and DECD one or more letter reports that summarize the remediation, abatement and demolition status of each parcel during each phase (Phase A and Phase B). The Applicant’s LEP will prepare an amended Remedial Action Plan (“RAP”) primarily relating to Phase A to be submitted for DEEP’s approval. Any revisions to the plans, cost estimates and timeline for work for Phase A and /or Phase B based on comments from DEEP will be submitted to DECD and DEEP for approval. The scope of the work for the various phases and major milestones shall be outlined and described. DECD shall be notified of all requests for ECs, EURs, variances, etc. and shall be provided all major milestone environmental reports. DECD shall also be copied on and notified of the submission of any verification to DEEP and issuance from DEEP of a designation of No Audit or an Audit Closure Letter, and of any EURs and modifications of EURs.

- (e) The Project Site was identified as an “establishment,” as defined by C.G.S. Section 22a-134 (the CT Transfer Act), because of a dry-cleaning facility that historically operated on the main campus. But since the property is in the BRRP Program, it is exempted from the requirements of the CT Transfer Act once the site is transferred from the Town to another entity.

### **ARTICLE 3 - PROJECT ADMINISTRATION**

#### **3.1. Audit and Inspection of Plant, Places of Business and Records.**

(A) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State’s Attorney and their respective agents, or where applicable, federal agencies, may, at reasonable hours, inspect and examine all of the parts of the Applicant’s and Applicant Parties’ plants and places of business which, in any way, are related to, or involved in, the performance of this Agreement.

(B) The Applicant shall maintain, and shall require each of the Applicant Parties to maintain, accurate and complete Records. The Applicant shall make all of its and the Applicant Parties’ Records available at all reasonable hours for audit and inspection by the State and its agents.

(C) The State shall make all requests for any audit or inspection in writing and shall provide the Applicant with at least twenty-four (24) hours’ notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

(D) The Applicant will pay for all costs and expenses of any audit and inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a breach by the Applicant under this Agreement. The Applicant will remit full payment to the State for such audit or inspection no later than thirty (30) days after receiving an invoice from the State.

(E) The Applicant shall keep and preserve or cause to be kept and preserved all of its and Applicant Parties’ Records until three (3) years after the latter of (i) final payment under this Agreement, (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Applicant shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

(F) The Applicant shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Applicant shall cooperate with an exit conference.

(G) The Applicant must incorporate this entire Section 3.1 verbatim into any contract or other agreement it enters into with any Applicant Party.

(H) If Applicant is subject to a federal and/or state single audit it must have an audit of its accounts performed annually. The audit shall be in accordance with the DECD Audit Guide, located at <https://portal.ct.gov/-/media/DECD/OFR/DECD-Audit-Guide-January--2019.pdf> and the requirements established by federal law and state statute. If Applicant is not subject to a federal and/or state single audit, it shall be subject to a Project-specific audit of its accounts within ninety (90) days of the completion of the Project or at such times as required by the Commissioner. Such audit shall be in accordance with the DECD Audit Guide. An independent public accountant as defined by generally accepted government auditing standards (GAGAS) shall conduct the audits. At the discretion and with the approval of the Commissioner, examiners from the DECD may conduct Project-specific audits.

3.2. Payment to Applicant. In order to permit the State to make payment to the Applicant with respect of the Funding, the Applicant agrees as follows:

- (A) Office of the State Comptroller Electronic Fund Transfer Automated Clearing House (“ACH”)(EFT) Program. Upon the execution of this Agreement, the Applicant shall provide current, verifiable bank account information for accounts with Applicant’s bank to the Office of the State Comptroller (“OSC”) by submitting a completed Electronic Funds Transfer ACH (EFT) Election Form, <https://www.osc.ct.gov/vendor/directdeposit.html>, and such additional information as the OSC may require.
- (B) Requisition Form. In order to bring about the transfer of moneys to the account designated under subsection (A) above (the “**Account**”), the Applicant shall requisition funds on forms provided by the Commissioner, in accordance with the Project Administration Plan described in Section 3.8, and in the manner prescribed by this Agreement. Payment to the Applicant will be made based upon said requisition forms.
- (C) Pre-agreement Costs. Unless authorized by the Commissioner in writing, no costs incurred before the start date of July 21, 2020 are eligible for payment from the Funding.

3.3. Personal Service Contracts. All Project cost items, except those to be performed by volunteers and those to be performed by employees of the Applicant who will not receive extra compensation for such service, shall be performed pursuant to a written contract, and the Applicant shall, upon request, provide the Commissioner with copies of all such contracts.

3.4. Repayment to State.

(A) Any unspent Funding shall become immediately due and payable by the Applicant to the State within ninety (90) days of the end date of the most recently approved Project Financing Plan and Budget.

(B) In the event that an audit demonstrates that the actual expenditures made by the Applicant in connection with the Project are less than the maximum allowable amounts for disbursement by the State, as set forth in Section 1.1 above, any such excess disbursement made by the State in respect of the Funding shall become immediately due and payable by the Applicant to the State. Upon repayment by the Applicant of such excess amount of the Funding which has been disbursed to the Applicant, the stated amount of the Funding under this Agreement shall be

amended, as applicable, so as to evidence the actual amount of the Funding which has been received by the Applicant.

3.5. Project Reports. The Applicant shall provide a cumulative Statement of Program Cost and a Detailed Schedule of Expenditures to the Commissioner in the approved DECD project statement format as outlined in the most current Accounting Manual located at <http://www.ct.gov/e cd/cwp/view.asp?a=1096&q=249670>. This information is required within ninety (90) days after the expiration date of the Project Financing Plan and Budget or earlier as determined by the Commissioner. Further information, such as supporting documentation (i.e. copies of invoices, cancelled checks, contracts etc.) for the expenditures charged may be requested from the Applicant as necessary.

Additionally, the Applicant shall submit project milestone and progress reports acceptable to the DECD with each payment request or at any time as requested by the DECD Project Manager. The reports will be due upon request, and are required until the expiration of the Project Financing Plan and Budget.

3.6 Project Financial Statements. The Applicant shall provide a cumulative Statement of Program Cost and a Detailed Schedule of Expenditures to the Commissioner in the approved DECD project statement format as outlined in the most current Accounting Manual located at <http://www.ct.gov/e cd/cwp/view.asp?a=1096&q=249670>. This information will be required to be provided within ninety (90) days after the expiration date of the Project Financing Plan and Budget or earlier as determined by the Commissioner. Further information, such as supporting documentation (i.e. copies of invoices, cancelled checks, contracts etc.) for the expenditures charged may be requested from the applicant, as necessary.

3.7 Project Progress Reporting. The Applicant shall submit project milestone and progress reports acceptable to the DECD with each payment request or at any time as requested by the DECD Project Manager. The reports will be due upon request, and will be required to be provided until the expiration of the Project Financing Plan and Budget.

3.8 Project Administrative and Monitoring Plan. The Applicant shall be required to submit to the DECD a project administrative and monitoring plan (the “**Project Administration Plan**”), acceptable to the DECD, that describes how they will document and monitor the financial and construction oversight of the State funds as required by this Agreement and as approved in DECD’s Project Financing Plan and Budget. The purpose of the Project Administration Plan is to assure the completion of the Project within the approved Financing Plan and Budget and the appropriate use of State funds. The Project Administration Plan should address how State funds will be disbursed in conjunction and in accordance with all contractual agreements. The Project Administration Plan should include the process that they will undertake to approve payment requisitions and project construction change orders. The Project Administration Plan shall be assumable by MTGA or any SPE Affiliate of MTGA following the transfer of the Property with respect to post-conveyance work. The Project Administration Plan shall set forth that such plan shall terminate following the expenditure of all State funds or the completion of the Project (including any required post-conveyance remediation and/or monitoring)./

3.9 Construction Compliance. DECD requires submission of project design documents, specifications, construction documents and cost estimates and other documents outlined in Schedule A. All submissions are subject to review, comment, and/or approval by the Office of Brownfield Remediation and Development and the DECD.

The Applicant shall submit for review and comment the following construction-related documents which need to comply with the latest version of the DECD Bidding, Contracting and Construction Guidelines: a) bonding and insurance requirements; b) copies of contracts; c) schedule of values; d) payment requisitions and change orders.

DECD requirements for approval of the release of funds for construction include review of construction documents, latest updated budget, submittal of bidding process, project schedule and cash flow updates, progress reports, and any appropriate back up materials as may be needed for review such as application and certificate of payment (AIA Document G702) approved by the architect and/or engineer, appropriate invoices, etc.

Separately for Phase A and Phase B, DECD will hold back the last five percent (5%) of the project funds until all required construction closeout documentation in accordance with DECD Bidding, Contracting and Construction Guidelines is submitted. This includes proof of completion of remediation work funded by DECD funds including, but not limited to, a Remediation Action Report, Verification Report, a recorded copy of the Environmental Use Restriction (EUR) Reports, DEEP Audit, abatement report, demolition report or any other reports requested by the Commissioner.

3.10 Special Waiver: Since the consultants and contractors listed below have been working with the Applicant and MTGA on the Remediation Project for the past few years and have a great deal of familiarity with the work and the site issues, DECD acknowledges that the Applicant and, with respect to any post-conveyance work, MTGA hereby requests a waiver from having to rebid the work for the contractors and consultants listed below. In consideration of the possible delays to the Project and potentially missing the 2021 construction season, the Commissioner provides a waiver to the Applicant and MTGA from rebidding the work. However, new contracts or extensions of existing contracts with the consultants and contractors will have to be executed prior to the Assistance Agreement closing. The Commissioner shall be given an opportunity to review and approve the contract language and amount, which approval shall not be unreasonably withheld since DECD has previously approved the contracts. The rates negotiated for the \$10M Grant will have to be adopted and locked in for the remainder of the Project since the Project is not being rebid, including any post-conveyance work by MTGA in Phase B. All other State and DECD guidelines will have to be followed. List of contractors and consultants:

- Tighe & Bond, Inc.
- Manafort Brothers, Inc.
- CLA Engineers, Inc.
- Construction Solutions Group
- Materials Testing, Inc.
- Mattern & Stefon Land Surveyors
- Archeological & Historical Services, Inc.

- ALTA Environmental Corporation for Phase B

#### ARTICLE 4 - DEFAULT

4.1. Instances of Default. The occurrence of any of the following events shall constitute a default under this Agreement (an "Instance of Default"):

(A) Breach of Agreement. If the Applicant fails to perform any act, duty, obligation or other agreement contained herein or in any other Project Document or fails to forbear from any unpermitted act, or if the Applicant abandons or terminates the Project, or takes such steps that such an abandonment or termination is imminent.

(B) Misrepresentation. If any representation or warranty made by the Applicant or caused to be made for the Applicant in any of the Project Documents prove at any time to be incorrect in any material respect.

(C) Unpaid Judgments. If a judgment or judgments for the payment of money shall be rendered against Applicant and any such judgment shall remain unpaid, unstayed on appeal, unbonded, undischarged or undismissed for a period of ninety (90) consecutive days.

(D) Receivership or Bankruptcy. If the Applicant shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of any of its assets; (ii) be unable or admit in writing its inability to pay its debts as they mature; (iii) file or permit the filing of any petition or reorganization or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or make an assignment for the benefit of creditors or consent to any form of arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its properties; or (iv) any action shall be taken by Applicant for the purpose of effecting any of the foregoing.

(E) Condemnation or Seizure. If any Federal, state or local governmental instrumentality, body or agency shall condemn, seize or otherwise appropriate, or take custody or control of all or any substantial portion of the properties or assets of Applicant.

(F) Lack of Adequate Security. If the State, at any time and in good faith, deems itself to be insecure. For the purposes of this Agreement, the State shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which materially impairs the prospects of the Applicant's business, or which materially affects the financial condition or business operations of Applicant or its permitted assignees.

(G) Violation of Terms in Other Project Documents. The occurrence of a default or violation under any of the Project Documents.

4.2. Events in Instances of Default.

(A) Notice of Default. If the Applicant defaults or shall commit or allow any breach of the Applicant's covenants, agreements and other obligations under this Agreement, material or otherwise, the Commissioner shall provide written notice of the breach ("Notice of Default") to the Applicant by overnight or certified mail, return receipt requested, to the most current address they furnished for the purposes of correspondence.

(B) Opportunity to Cure. The Commissioner may provide the Applicant thirty (30) days after the Notice of Default, or such longer period of time as the Commissioner may determine and set forth in writing, to cure or remedy the default or breach. Said cure or remedy will not be effective unless accepted, in writing, by the Commissioner. The Commissioner may determine that permitting an opportunity to cure a default could jeopardize the Project or security, or would not be in the best interests of the State. Under those circumstances, no opportunity to cure need be given and the Commissioner may seek other remedies.

(C) Remedies. Upon the occurrence of an Instance of Default, the State, acting by the Commissioner, shall have, to the full extent permitted by law, each and all of the following remedies in addition to those provided for in other portions of this Agreement:

(1) To suspend all further payments by the State to the Applicant until such noncompliance is cured to the satisfaction of the Commissioner;

(2) To proceed to enforce the performance or observance of any obligations, agreements, or covenants of the Applicant in this Agreement or the Project Documents;

(3) To declare the entire amount of the Funding to be immediately due and payable and to bring any and all actions at law or in equity as may be necessary to enforce said obligation of repayment. In such Instances of Default, the Applicant hereby agrees to repay immediately to the State the entire amount of the Funding received, and liquidated damages equal to five percent (5%) of the total amount of the Funding received;

(4) The right to a writ of mandamus, injunction or similar relief against the Applicant because of such default or breach;

(5) The right to maintain any and all actions at law or suits in equity, including receivership or other proper proceedings, to cure or remedy any defaults or breaches of covenants under this Agreement;

(6) The Applicant agrees that, upon an event of default or after a judgment hereon, all expenditures incurred by the State under the Project Documents including the Funding shall bear interest at the rate of fifteen percent (15%) per annum from the date of demand, default or judgment as applicable.

(7) The State may collect a late charge not to exceed an amount equal to five percent (5%) of any installment of interest or principal or both on the Loan which is not

paid within fifteen (15) days of the date on which payment is due. Late charges shall be separately charged and collected from the Applicant and shall be due upon demand by the State.

(8) The State may collect costs associated with collection efforts as outlined in Section 2.9 of this Agreement

## **ARTICLE 5 - MISCELLANEOUS PROVISIONS**

### **5.1. Nonwaiver & Sovereign Immunity.**

(A) If the State does not exercise, or delays in exercising, or exercises in part any of the State's rights and remedies set forth in this Agreement for the curing or remedying of any default or breach of covenant or condition, or any other right or remedy, in no event shall such non-exercise, delay or partial exercise be construed as a waiver of full action by the State or a waiver of any subsequent default or breach of covenant or condition.

(B) The parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section of this Agreement, this Section shall govern.

5.2. Severability. If any term or provision of this Agreement or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent possible by law.

5.3. Agreement Date. This Agreement shall become effective as of the date the Commissioner or his designee affixes his signature hereto.

5.4. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. Transmittal of the signatures of the parties to this Agreement by email or facsimile shall be deemed as effective as an original signature thereon.

5.5. Multiple Applicants. INTENTIONALLY OMITTED.

5.6. Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (collectively, "Notices") are deemed to have been received two (2) days after the date that the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or one (1) day after the date sent if placed with a recognized, overnight express delivery service that provides for a return receipt. Any notice to the Applicant pursuant hereto or pursuant to any of

the Project Documents may be served in person or by mail. Any such requirement shall be deemed met by any written notice personally served at the principal place of business of the Applicant, or at such other address as the Applicant shall notify the Commissioner, or mailed by depositing it in any post office station or letter box enclosed in a postage-paid envelope addressed to the Applicant at Town of Preston, 389 Route 2, Preston, CT 06365 or at such other address as provided above. Any notice to the State, DECD, or the Commissioner shall be addressed to the Commissioner at 450 Columbus Boulevard, Hartford, Connecticut, 06103 .

5.7. Waivers by Applicant. The Applicant and all others who may become liable for all or any part of this obligation do hereby waive demand, presentment for payment, protest, notice of protest and notice of non-payment of this Agreement and do hereby consent to any number of renewals or extensions of time of payment hereof and agree that any such renewals or extensions may be made without notice to any of said parties and without affecting their liability herein and further consent to the release of any party or parties liable hereon, all without affecting the liability of the other persons, firms or corporations liable for the payment of this Agreement.

5.8. Headings, Number and Gender. The headings given to the Sections in the Agreement are inserted only for convenience and are in no way to be construed as part of the Agreement or as a limitation of the scope of the particular Section to which the heading refers. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

5.9. Amendments; Supremacy and Entirety of Agreement.

(A) No amendment to or modification of this Agreement shall be valid or binding unless made in writing, signed by the parties and approved by the Connecticut Attorney General. Any and all documents authorized in connection with this Agreement shall be subject to the terms of this Agreement. This Agreement contains the complete and exclusive statement of the terms agreed to by the parties.

(B) In the event that the Applicant seeks modification in the form of a consent or a subordination to financing required by the Applicant in its normal course of business, the Applicant shall request such modification in writing to the Commissioner not less than thirty (30) days prior to the date such modification is required. The Applicant shall promptly reimburse the State for expenses, including reasonable attorneys' fees, incurred in negotiating and entering into such modification.

5.10. Provision of Other Documents. Upon the request of the Commissioner, the Applicant shall execute and deliver or cause to be executed and delivered such further documents and instruments and do such further acts and things as the Commissioner may request in order to effectuate more fully the purposes of this Project, to secure more fully the payment of the Funding in accordance with its terms, and to vest more completely in and assure to the Commissioner its rights under the Project Documents. Without limiting the generality of the foregoing, the Applicant will join with the Commissioner in executing such agreements, notices or other documents or instruments as the Commissioner shall deem necessary or desirable to create, preserve, protect, maintain or enforce its rights and interests in the property of the Applicant under this Agreement, the Negative Pledge and the Covenant. The Applicant shall pay the cost of filing

and recording, or re-filing and re-recording, such documents and instruments in all public offices in which such filing or recording, or re-filing or re-recording, is deemed by the Commissioner to be necessary or desirable.

5.11. Assignment. The Applicant shall not assign any of its rights or obligations under the Agreement, voluntarily or otherwise, in any manner without the prior written consent of DECD and except as contemplated herein.. DECD may void any purported assignment in violation of this Section 5.11 and declare the Applicant in breach of the Agreement. Any Termination by DECD for a breach is without prejudice to DECD's or the State's rights or possible Claims.

5.12. Survival of Representations. For the purposes of this Agreement, the term "Applicant" or "Contractor" shall mean and include any successor or assigns of Applicant including any representative of Applicant under the provisions of any state or Federal law governing bankruptcy, insolvency, receivership or reorganization. All warranties, representations and covenants made by the Applicant in this Agreement or in any certificate or instruments delivered to the State in connection with the Funding shall be considered to have been relied upon by the Commissioner and shall survive until the later of: (i) ten (10) years after receipt of the last installment of the Funding; or (ii) repayment in full of the Funding. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties; provided, however, that nothing in this provision shall imply that the Applicant has the right or authority to assign its rights, duties or obligations hereunder or under this Agreement without the written consent of the Commissioner.

5.13. Governing Documents. In the event of any conflict between this Agreement and any of the attached Project Documents, this Agreement, sans Exhibits, shall be controlling.

5.14. Third Parties. This Agreement is between the State and the Applicant only and shall not be relied upon by any third party.

5.15. Forum and Choice of Law. The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Applicant waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

5.16. Expiration or Termination of Agreement. This Agreement shall remain in full force and effect for the entire term of the contract period unless terminated by the DECD.

(A) Notwithstanding any provisions in this Agreement, DECD, through a duly authorized employee, may Terminate the Agreement whenever DECD makes a written determination that such Termination is in the best interests of the State. DECD shall notify the Applicant in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Applicant must modify or complete its Performance prior to such date.

(B) Notwithstanding any provisions in this Agreement, either party, through a duly authorized employee, may, after making a written determination that the other has Breached the Agreement and failed to remedy the Breach, Terminate the Agreement in accordance with the provisions in the Breach Section of this Agreement.

(C) Notices of Termination must be sent in accordance with the Notice Section of this Agreement. Upon receiving the Termination notice from DECD, the Applicant shall immediately modify or discontinue all Performance affected in accordance with the terms of the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to DECD all Records. The Records are deemed to be the property of DECD and the Applicant shall deliver them to DECD no later than thirty (30) days after the Termination of the Agreement or fifteen (15) days after the Applicant receives a written request from DECD for the Records. The Applicant shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, PDF, ASCII or .TXT.

(D) Except for any work which DECD directs the Applicant to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Applicant shall Terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.

(E) DECD shall, within forty-five (45) days of the effective date of Termination, reimburse the Applicant for its Performance rendered and accepted by DECD in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Applicant to complete. However, the Applicant is not entitled to receive and DECD will not tender to the Applicant any payments for anticipated or lost profits. Upon request by DECD, the Applicant shall assign to DECD, or any replacement contractor which DECD designates, all subcontracts, purchase orders and other commitments, deliver to DECD all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Applicant's property, equipment, waste material and rubbish related to its Performance, all as DECD may request.

(F) If the Applicant (a) fails to cure a Breach in accordance with this Section 5.16 is in violation of any of the Representations and Warranties herein, or if any of those Representations and Warranties are false or misleading in any material respect, then, notwithstanding any provisions in this Agreement, DECD may Terminate with no Remedy Period. DECD may also revoke any consent to assignments given, with the effect of the assignments never having been requested or consented to. In case of such revocation, DECD will have no liability or responsibility to Applicant or Applicant Parties or any third party, or any of them, resulting from the Termination or revocation.

(G) Upon Termination of the Agreement, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Agreement shall survive such Termination to the extent not otherwise limited in the Agreement and without each one of them having to be specifically mentioned in the Agreement.

(H) Termination of the Agreement pursuant to this Section shall not be deemed to be a breach of contract by DECD.

## **ARTICLE 6 - SPECIAL CONDITIONS**

6.1. The Pass-Through Agreement between and among DECD, the Applicant and an SPE Affiliate of MTGA in form and substance substantially as set forth in **Exhibit D** attached hereto and made a part hereof shall be executed prior to the commencement of Phase B (post-conveyance phase) of the Project. Any funds allocated to Phase A of the Project that remain unused at the completion of Phase A will be added to the budget for and held in escrow by DECD for use for Phase B. No DECD funds will be released until the PDDA is amended or amended and restated. The SPE Affiliate of MTGA must adhere to standard DECD terms and conditions applicable to State Financial Assistance under the provisions of C.G.S. Sections 32-765 and 32-763 to the extent applicable to the SPE Affiliate. It is the understanding of DECD that the cost to disturb the 4-foot Direct Exposure Criteria (DEC) compliant soil established during Phase A and for any Phase B remediation or redevelopment work will be minimal and will in no case exceed the available Funding. After any conveyance of the Property to the SPE Affiliate of MTGA, the SPE Affiliate shall complete the Phase B work in accordance with the Remedial Action Plan and abatement/demolition plan with the remaining Grant and Loan funds, as supplemented if necessary with private financing. The State shall not contribute any additional funds towards the completion of the remediation and redevelopment project above and beyond the \$2,000,000 Loan and the \$7,000,000 Grant. The Town will make sure to arrange to provide all required documentation such as the contracts to DECD.

6.2. The Loan funds will be spent after the \$7 million of Grant funds, unless as otherwise provided in this Agreement.

6.3. In line with the SBC's directive to DECD, \$2 million of the Grant funds and \$2 million of the Loan funds set aside for Phase B post-conveyance will be held in escrow at DECD until disbursed from time to time in accordance with the Escrow Release Plan referred to in the Proposal, to fund the remediation stages required to support site development in accordance with the Remedial Action Plan for Phase B. Notwithstanding the foregoing, to the extent that the Applicant fails to exhaust the Grant funds set aside for Phase A pre-conveyance, such unused Grant funds shall be added to the escrow for the Phase B post-conveyance.

6.4. The Applicant shall prepare an amended Remedial Action Plan for Phase A and a demolition/abatement plan as needed that is consistent with MTGA's known redevelopment plans and will provide to DECD for review and approval in a timely manner. Any revisions to the estimated costs and proposed timelines for the Remediation and Verification Phase (Phase A) will

have to be approved by the DECD. In no event shall funding for Phase A pre-conveyance exceed \$5 million. Details will be provided in the Project Administration Plan.

6.5. Advances of the State Financial Assistance will be on a reimbursement basis based on submissions of invoices and project progress reports submitted by the Applicant. The Applicant shall submit Requisitions for Payment on forms approved by the Commissioner of DECD and shall include all backups (specified in the Project Administration and Monitoring Plan) and certifications and for construction projects a certified (AIA G-702/703) with each request for payment. The Applicant will provide copies of cancelled checks to contractors (or wiring information) to DECD once the payment is made. Funds shall be reimbursed to the Applicant for brownfield cleanup activities on an “as needed basis” and consistent with the Remediation Action Plan(s) and demolition/abatement plan(s). These activities shall include but not be limited to environmental engineering, demolition work and hazardous building materials abatement, and site remediation, and in the case of each of the foregoing on and off site as required or necessary.

6.6. Any change in estimated costs or change orders will be brought to the attention of the DECD Project Managers immediately with proper technical supporting documentation. The Applicant shall use its reasonable efforts and act in good faith to provide that there are sufficient funds to complete the Remediation Project. Value engineering and other recommendations to be cost-efficient will have to be provided to DECD.

6.7. Any Grant funds that are not expended during the demolition/remediation/abatement phase (Phase A and Phase B, collectively) shall stay with the State of Connecticut/DECD.

6.8. As stated in the November 9, 2020 letter from the SHPO Office, but except as may be provided otherwise in the Easement Declaration of Covenants and Declaration of Preservation Restrictions dated September 17, 2012:

- All steps will be taken to conduct archeological investigations by the Applicant and MTGA during construction and remediation activities as a part of the Remediation Project, before and after conveyance to the SPE Affiliate of MTGA, to prevent potential impacts to archaeological resources, adopting methods agreed upon with SHPO.
- The Administration Building will remain and shall be incorporated into the proposed redevelopment of the Project Site unless either the Applicant or the SPE Affiliate of MTGA shall have demonstrated to SHPO’s full satisfaction that there is no prudent or feasible alternative to retain the building pursuant to CEPA and the site development plan, and a suitable mitigation would thus be required.

Failure to do the above, will be considered as a material breach of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto make and enter into this Agreement.

**TOWN OF PRESTON**

By: \_\_\_\_\_  
Name: Sandra L. Allyn-Gauthier  
Title: First Selectwoman  
Duly Authorized

Dated: \_\_\_\_\_

**STATE OF CONNECTICUT  
DEPARTMENT OF ECONOMIC  
AND COMMUNITY DEVELOPMENT**

By: \_\_\_\_\_  
David Lehman  
Commissioner  
Duly Authorized

Dated: \_\_\_\_\_

**CONNECTICUT ATTORNEY GENERAL**  
*(Approved as to form)*

By: \_\_\_\_\_  
Name:  
Title:  
Duly Authorized

Dated: \_\_\_\_\_

***OR select***

This Agreement having been reviewed and approved, as to form, by the Connecticut Attorney General, it is exempt from review pursuant a *Memorandum of Agreement* between the State of Connecticut, Department of Economic and Community Development and the Connecticut Attorney General dated December 8, 2020, as may be amended from time to time.

## **SCHEDULE A (Construction Related Documentation - Brownfield Projects)**

### **Schedule of Submissions and Approvals required for State Assistance**

The DECD will require the Applicant to provide certain documents prior to the start of construction and through the completion of the project. For brownfield projects, "construction" shall be considered any combination thereof of hazardous building materials abatement, demolition, remediation or activities directly related to such items. In addition, DECD will require certain reviews and opportunities for comment during design and construction, through the completion of the project. The following outlines some of these documents and some of the anticipated DECD approvals:

#### **Submissions to DECD – Start of Project to Construction Completion:**

- Schematic Design Plans/Remediation Action Plans
- Contracts with professional consultants and construction/remediation contractors
- Consultant Engineering Reports (including but not limited to, civil/site, environmental site assessments and other environmental reports, geotechnical, and structural)
- CGS 25-68(d) Floodplain Certification Submission (if applicable)
- Appraisal Reports
- Historic and Archeological Surveys, Reports, SHPO Review Letter and Mitigation Deliverables (if applicable)
- Affirmative Action Compliance Reports
- Risk Register
- Environmental Condition Assessment Form (ECAAF) submitted to DEEP
- DEEP's formal response acknowledging receipt of Voluntary Remediation Program (VRP) documentation
- Applicant Single Audit Act Reports
- Third Party Special Inspection Reports
- Progress Reports by Applicant (format to be approved by DECD)
- Meeting Minutes and Correspondence (between owner, architect, environmental consultant/LEP, and/or contractor)

**DECD Site Development Involvement:** DECD requires on and off-site project access on regular basis for review of design and construction developments.

#### **Submissions to DECD Upon Completion of Construction:**

- Project Financial Statement
- Certificate of Occupancy (where applicable)
- Proof of completion of remediation (DEEP Verification Report, Environmental Use Restriction (EUR), and/or DEEP Audit etc. as per applicable regulations.)
- Proof of completion of abatement as per applicable regulations
- Record documents (As Builts)
- Certificate of Substantial Completion (AIA form G704)
- Contractor's Affidavit of Payment of Debts and Claims (AIA form G706)
- Contractor's Affidavit of Release of Liens (AIA form G706A)
- Subcontractors and Suppliers Release or Waiver of Liens

- Consent of Surety Company to Final Payment (AIA G707)
- Consent of Surety to a Reduction in or Partial Release of Retainage at 50% project completion, if applicable: (AIA form G707A) Requires DECD concurrence.
- Final Application and Certificate for Payment (AIA form G702, and continuation sheet G703)

If the contractor has provided Contractor's Affidavit of Release of Liens (AIA form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage. If these documents are not provided, retainage cannot be paid until 91 days after the date on the Certificate of Substantial Completion.

**EXHIBIT A**

[Attached Project Documents]

Proposal - Attached

Project Financing Plan and Budget - Attached

Application – On File

Authorization of the Governing Body – To Be Provided

EXECUTION COPY

# State of Connecticut

Governor Ned Lamont

**Department of Economic and Community Development**

Commissioner David Lehman



**Financial Assistance Proposal**

**To**

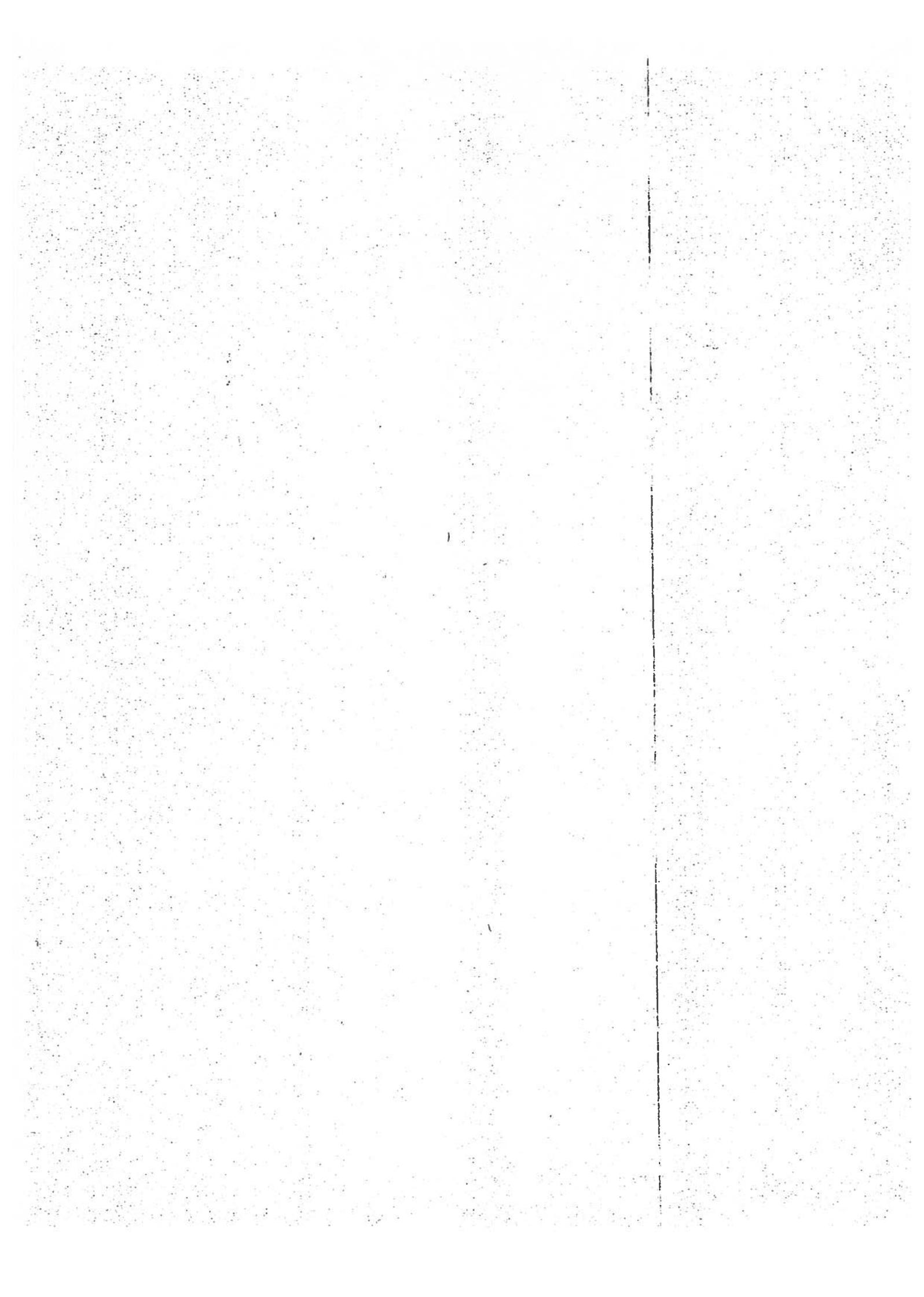
**The Town of Preston**

**For**

**Preston Riverwalk Brownfield Project – Part II/III**

**(\$2M Brownfield Loan and \$7M Grant)**

**September 2021**



September 9, 2021

Ms. Sandra L. Allyn-Gauthier  
First Selectwoman  
Town of Preston  
389 Route 2  
Preston, CT 06365

Honorable First Selectwoman Allyn-Gauthier:

The Department of Economic and Community Development (DECD) is pleased to submit a proposal for assistance in support of Preston's plans to remediate and redevelop the former Norwich State Hospital site. Plans for the project include a mixed-use development project on the 393-acre site and will include retail, commercial and residential units. There will also be open space and recreational space for active and passive activities. The following pages contain a project description and supporting details of a financial assistance package developed jointly between your staff and ours.

This proposal rescinds and supersedes the DECD Financial Assistance Proposal dated September 4, 2018 for a targeted brownfield loan for \$2 million for the same project.

This proposal represents Governor Lamont's continuing commitment to support Connecticut's municipalities and we are pleased to have an opportunity to work with you on this project. The success of your project and your community are important to us.

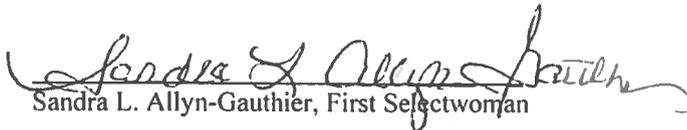
Our staff will continue to be available to you and your staff throughout the duration of the project. If you have any questions concerning this proposal please contact Ned Moore, your project manager at (860) 500-2448.

Sincerely,



David Lehman  
Commissioner

**Agreed and Accepted By:**  
Town of Preston



Sandra L. Allyn-Gauthier, First Selectwoman

9/16/2021  
Date

## BACKGROUND

**Applicant Description:** The Town of Preston (the “Applicant” or “Town” or “Preston”) is located in southeastern Connecticut, in New London County. Preston has a population of 4,726, a land mass of 31 sq. mi. and is adjacent to the Thames River. The Preston Redevelopment Agency (“PRA”) will be implementing the Project (as defined below) on behalf of the Applicant and will interact with DECD and MTGA during the course of Phase A and B of the Project.

**Project Site Description:** The former Norwich State Hospital (the “Project Site”), located at 14, 16, 19, 54, 102, 107, and 111 Route 12 Preston CT consists of seven parcels, approximately 388 acres in size and are located in the northwest corner of the Town of Preston and on the western side of the Thames River in southeastern Connecticut. State Parcels 4, 5 and 6 occupied the “Core Campus” of the former Norwich State Hospital; State Parcel 2 is located east of the Core Campus and Route 12; State Parcels 1, 7N and 7S are located south of the Core Campus and are not as significantly developed. The following table indicates the addresses and acreage of the various parcels that comprise the site.

Parcel 1	102 Route 12	30.9 acres
Parcel 2	19 Route 12	205.5 acres
Parcel 4	54 Route 12	47.9 acres
Parcel 5	16 Route 12	1.8 acres
Parcel 6	14 Route 12	70.6 acres
Parcel 7S	111 Route 12	24.7 acres
Parcel 7N	107 Route 12	6.4 acres

**Project and Funding Background:** The former Norwich State Hospital, which was constructed in 1903 and opened in 1904, was a mental health facility. The property straddles land in both the City of Norwich and the Town of Preston. It was a psychiatric facility in southeastern Connecticut from 1904 to 1996 when the state closed its doors due to the deinstitutionalization movement. When Preston acquired the property there were 59 structures on the property.

The vacant property deteriorated over the years. The buildings were vandalized, asbestos and other Hazardous Building Materials (“HBMs”) were exposed to the elements, roofing systems failed and the building became infested by vermin and other indigenous animals. In 2005, the State and Town initiated discussions to convey the property from the State to the Applicant. The Town agreed to assume that portion of the site located within its jurisdiction from the state and in March of 2009 the transfer was completed. The Applicant also agreed to be the responsible party for the environmental liabilities associated with the Project Site. The Town’s goal was to sell it for redevelopment purposes. The same year, in April 2009, the Town approved an ordinance creating the PRA to act as the lead agency on behalf of the Applicant to supervise and oversee the remediation and cleanup of the site and identify a financial partner to redevelop the site. Accordingly, the PRA commissioned a redevelopment plan for the property and began to seek out grants and loans to make the property shovel-ready for future revitalization and reuse.

As of this date, the total funding from the Department of Economic and Community Development (DECD) for the project site from various funding programs is \$19,435,000.

Funding from other federal sources (U.S. EPA and USDA) equals \$2,200,000. The Applicant's share in funding equals \$2,495,000. Below is a brief timeline/synopsis of the funding history:

- 2009 to 2011 – The Applicant received several federal grants (U.S. EPA and USDA) to initiate environmental assessment and clean-up work totaling \$1.8M with a local match of \$240K. The Project Site also received a total of \$70K in historic preservation grants (C&T) with a \$50K local match for abatement and preservation work of the Administration Building.
- 2012 to 2013 – The Town received \$1M in Urban Action (OPM) and \$500K in STEAP grant funds for demolition work. The Town was also awarded a \$2M forgivable brownfield loan for furthering the demolition activities, matched by \$2M in Town funds financed with its general obligation bonds.
- 2014 to 2015 – A \$5M Urban Action (OPM) grant enabled the expansion of demolition activities to several buildings. After that the state/DECD's involvement with the project was funding of smaller grants until the Town identified a development partner. Three competitive brownfield grants (Rounds 1, 4 and 7) totaling \$865K were awarded for further investigation and cleanup work matched by \$125K in Town funds. The Applicant also received a total in \$400K in U.S. EPA Clean-up funds with a local match of \$80K of Town funds.
- 2016 to 2017 – In early 2016, the Mohegan Tribal Gaming Authority (currently d/b/a Mohegan Gaming and Entertainment) ("MTGA") indicated to the Applicant of its potential interest in the acquisition and development of the Project Site. The Applicant and MTGA entered into a Property Disposition and Development Agreement dated April 19, 2017 (the "PDDA") for the conveyance, development and use of the property by MTGA.

A special state fund to remediate state-owned and formerly state-owned brownfields was created, which opened up a new source of remediation funding for the Project Site. A \$10M Grant from the State Owned Brownfield Properties Program was awarded in 2017 (2017 \$10M Grant) to implement the redevelopment plans envisioned by MTGA based on an opinion of probable cost and the Master Development Plan for the development of the Project Site included in the PDDA (the "Master Plan").

The Master Plan provided for a high quality, integrated mixed use project suitable for the unique nature of the site and consisting of entertainment, recreation, hotel and retail uses, including a life style center, restaurants, convenience, business, timeshare and senior housing and similar or related uses, with a cost of construction, projected to be between \$200M and \$600M. As per the terms and conditions of the PDDA, MTGA is able to modify and supplement the Master Plan at any time, under certain circumstances following review and approval by the PRA. In addition, one of the terms of the PDDA was that the Town was expected to provide a Licensed Environmental Professional ("LEP") verification to the Department of Energy and Environmental Protection ("DEEP") indicating that the complete property was cleaned up to residential standards

(except for certain consolidation and other areas with environmental land use restrictions), prior to conveyance to MTGA.

- 2018 to date – At the time the PDDA was executed, the 2017 \$10M Grant was envisioned to be sufficient to complete pending remediation activities based on known contaminants. In anticipation of unexpected remediation costs, DECD offered a \$2M loan to the Town in a Financial Assistance Proposal dated September 4, 2018 as a contingency (\$2M loan contingency) to complete unanticipated remediation prior to obtaining verification and conveyance of the property to MTGA.
- Demolition and remediation work began as per the May 2018 Remedial Action Plan. But in the summer of 2019, the Preston team discovered that, prior to the Town’s ownership, coal ash/cinder used beneath roadways was disturbed during installation or repair of utilities. This was due to the prior owner spreading out the coal ash/cinder well beyond the roadway bed (upwards of ten feet on both sides of the roadway) when those installations were performed. So when the prior owner backfilled the utilities, the coal ash/cinders that was excavated was inadvertently mixed with clean fill, which impacted more material than originally anticipated. This finding resulted in the estimated remediation expenses significantly escalating well in excess of the \$2M loan contingency set-aside. Thereafter, at meetings held among Preston, MTGA, DECD and DEEP, it was agreed that:
  1. All cost saving methods and value engineering will be identified to bring down the estimated costs to complete the remediation work. MTGA would consider accepting a site where the parcels would be cleaned up to a level dictated by the end use proposed in the Master Plan (instead of residential standards as agreed to by the Applicant and MTGA in the PDDA), along with the use of environmental use restrictions (“EURs”) and engineered controls (“ECs”) acceptable to MTGA. MTGA would also accept the site cleaned up to the levels described above, once the Applicant receives a Letter of No Audit (or equivalent documentation as set forth in the PDDA) from DEEP after completion of remediation and LEP verification. These changes would require an amendment to the PDDA between MTGA and the Applicant;
  2. The Applicant would work with its consultant team and MTGA and its consultant team to arrive at the most conservative amount that will be required to remediate and cleanup the Project Site consistent with item 1 above and the Master Plan envisioned by the PDDA; and
  3. Preston would request the legislature to authorize the additional funds that would be held in escrow until a feasible and cost-effective plan was developed in conjunction with the amendment of the PDDA and the Master Plan.

In March 2020, the Bonding Bill was passed that included a \$7M brownfield grant for the Project Site (P.A. 20-1, Sec. 13(e)(1)). On July 21, 2020, the State Bond Commission (SBC) approved allocation of the funds (Item #5). As a condition of this approval, the SBC has directed

DECD to hold the funds in escrow and to utilize the same for pending remediation work after a cost-efficient remediation plan is approved.

This Financial Assistance Proposal (as defined below) rescinds and supersedes the \$2M loan contingency proposal dated September 4, 2018. It includes both the \$2M Targeted Brownfield Loan and the new \$7M Municipal Brownfield Grant, the details of which are described in the subsequent clauses.

**Project Description:** A \$2 million loan from the Targeted Brownfield Development Loan Program (the “Loan”) and a \$7 million grant from Municipal Brownfield Grant Program (the “Grant”) will be used by the Applicant to finance additional environmental remediation and cleanup of the former Norwich State Hospital Project Site (the “Remediation Project” or “Project”). The Loan and the Grant are sometimes referred to herein, individually and collectively, as the “State Financial Assistance.” The Remediation Project will facilitate the redevelopment envisioned by the the Applicant and MTGA based on an amendment or amendment and restatement of the PDDA that will be a condition to release of funding by DECD within the Assistance Agreement for the Project (the “Assistance Agreement”).

In line with the SBC’s directive to DECD, all funds related to the Grant will be held in escrow by DECD. As stated in other parts of this Financial Assistance Proposal and under the Special Conditions clause, a plan for the release of funds relating to the Grant and Loan for Phase A and Phase B will be established as a condition of the Assistance Agreement, which plan shall be subject to change as the development occurs (the “Escrow Release Plan”). The Escrow Release Plan will be based on technical reports, documentation and contracts for implementation of the work that will validate the budget, scope, timeline and cost estimates for the various phases of the Project.

The Applicant expects to obtain a Letter of No Audit (as set forth in the PDDA) from DEEP after completion of the remediation and verification phase as a necessary prerequisite to the transfer to the MTGA (see table below). The Town did an analysis of the costs to remediate to residential versus non-residential standards. The remediation standard regulations (RSRs) criteria for arsenic and certain polynuclear aromatic hydrocarbons (PAHs) are the same for both residential and industrial/commercial uses. Since the coal ash was found to have arsenic and PAHs, the estimated costs to remediate the same (as per technical costs statement letter from the Town letter dated November 14, 2019) significantly increased, but the costs were not significantly different to meet residential versus non-residential standards.

At this point, it is DECD’s understanding that all the parcels will be remediated to residential standards (where applicable) with the implementation of EURs, Variances and ECs before conveyance to MTGA. In addition, portions of Parcels 4 and 6 will be capped with Direct Exposure Criteria (“DEC”) compliant soil prior to conveyance to MTGA, and such capping with EURs and/or ECs will render the DEC not applicable for such portions of Parcels 4 and 6. The balance of the funds of the Grant after completion of the remediation and verification phase (Phase A) will be held in escrow at DECD and will be utilized for any additional remediation work at the Project Site, identified as a result of construction work to be done as part of the post conveyance implementation by MTGA (Phase B). The scope and budget of work to be

completed by MTGA after conveyance with respect to any discrete portion of the Phase B work shall be agreed upon prior to the release of any funds of the Grant under the Assistance Agreement for such portion of the Phase B work. The budget calculations for each portion of the Phase B work shall be supported by technical reports, documentation and contracts for implementation of such portion of the work.

It is also understood that all of the funds of the Grant held in escrow by DECD may not be utilized for the Remediation Project and as such, any balance of the Grant funds not utilized for the Remediation Project will be returned back to the DECD Brownfield Program.

Brief summary and scope of the phases/milestones of the Remediation Project is presented below (please refer to Attachment 3 Preston Clean Up Cost 2020):

<b>Phase</b>	<b>Brief Description</b>	<b>Estimated Cost</b>
<b>A</b>	<b>PRE-CONVEYANCE – Remediation and Verification</b>	
	Remediation of all parcels, tunnels, utility trenches	\$2,018,600
	Consolidation Area B expansion	\$500,000
	Abatement of Pipe Pier and Sewage Plant	\$550,000
	Abatement and demolition of Pathway Building	\$135,000
	Consultant expenses (soft costs)	\$602,400
	Sub-total for remediation, abatement and demo-work, pre-conveyance	\$3,806,000
	Pre-conveyance Contingency*	\$1,159,000
	DECD legal expenses	\$35,000
	<b>TOTAL – Phase A</b>	<b>\$5,000,000</b>
<b>B</b>	<b>POST-CONVEYANCE</b>	
	Consolidation Area A and B expansion	\$685,000
	Abatement of Asbestos Containing Material in clay and duct bank	\$1,140,000
	Additional abatement of utility asbestos	\$1,000,000
	Consultant expenses (soft costs)	\$285,145
	Sub-total for remediation and abatement work, post-conveyance	\$3,110,145
	Escrow Contingency	\$889,855
	<b>TOTAL – Phase B</b>	<b>\$4,000,000</b>

<b>SOURCE AND USE OF FUNDS</b>
--------------------------------

<b>Sources of Funds</b>	
DECD – Targeted Brownfield Development Loan	\$2,000,000
DECD – Municipal Brownfield Grant	\$7,000,000
<b>Total</b>	<b>\$ 9,000,000</b>

<b>Use of Funds</b>	
Administration/DECD Legal	\$35,000
Planning/Assessment/Engineering etc.	\$887,545
Abatement and Demolition	\$3,510,000
Remediation/Construction	\$2,518,600
Contingency	<u>\$2,048,855</u>
<b>Total</b>	<b>\$9,000,000*</b>

*\* The amounts set forth above may be amended or transferred among the above line items within Phase A and Phase B from time to time through requests for revisions to the Project Financing Plan and Budget, as approved by the Department of Economic and Community Development.*

### **FINANCIAL ASSISTANCE PROPOSAL**

This financial assistance proposal (the "Financial Assistance Proposal") is based upon the commitment of the "Applicant" to implement the Project as described herein. The State of Connecticut, acting through DECD and under the provisions of the C.G.S. Sections 32-765 and 32-763 proposes a financial assistance package consisting of the Loan in the amount of \$2,000,000 (the "Loan") and the Grant in the amount of \$7,000,000, respectively, for a total amount of \$9,000,000. DECD financial assistance shall not exceed \$9,000,000, as described in this Financial Assistance Proposal and as set forth in the most recently approved Project Financing Plan and Budget. The components of this financial assistance are outlined below:

**Applicant:** Town of Preston

**DECD Financing:** \$9,000,000 Brownfield Loan and Grant

**Amount and Use of DECD Funds:**

\$ 35,000	Administration/DECD Legal
\$ 887,545	Planning/Engineering
\$ 3,510,000	Abatement/demolition
\$ 2,518,600	Remediation
<u>\$ 2,048,855</u>	<u>Contingency</u>
<b>\$ 9,000,000</b>	<b>TOTAL</b>

### **LOAN TERMS**

The following are the terms for the \$2,000,000 targeted brownfield loan.

**Rate:** The rate of interest for the Loan will be 1.0%.

**Term:** 20 years.

**Deferral:** All payments of principal and interest shall be deferred until the later of May 1, 2026 or the fifth anniversary of the conveyance of the Property to MTGA (or an SPE Affiliate of MTGA or a project development participant), and interest shall not accrue.

**Repayment:** Commencing on the later of June 1, 2026 or the first day of the month following the fifth anniversary of the conveyance of the Property to MTGA (or an SPE Affiliate of MTGA or a project development participant), or a later date if and to the extent necessary to conform to a change occurring by operation of the terms of the PDDA, as may be amended, and continuing on the first day of each and every month thereafter until the date which is twenty (20) years from the date of the final Assistance Agreement, payments of principal and interest will be made. Payments will be made payable to the State of Connecticut, Department of Economic and Community Development.

**Prepayment Penalty:** None

**Late Payment Penalty:** Five percent (5%) of any installment of interest or principal or both which is not paid within fifteen (15) days of the date on which the payment is due.

**Forgiveness:** (a) If the developer of the Project, MTGA (or its affiliates or project development participants), shall have invested a minimum of Two Hundred Million Dollars (\$200,000,000.00) on the Project Site prior to the later of May 1, 2026 or the fifth anniversary of the conveyance of the Property to MTGA (or an SPE Affiliate of MTGA or a project development participant), or a later date if and to the extent necessary to conform to a change occurring by operation of the terms of the PDDA, as may be amended, the DECD Commissioner on behalf of the State will forgive the full amount of the Loan (the "Forgiveness Credit").

(b) ALTERNATIVELY, for each one hundred (100) permanent, full-time employment positions being created on the Project Site prior to the later of May 1, 2026 or the fifth anniversary of the conveyance of the Property to MTGA (or an SPE Affiliate of MTGA or a project development participant), or a later date if and to the extent necessary to conform to a change occurring by operation of the terms of the PDDA, as may be amended, and maintained for twelve (12) consecutive months at any time during the Job Calculation Period ("Forgiveness Threshold"), the State will forgive the lesser of (a) the outstanding principal balance of the Loan or (b) One Million and No/100 Dollars (\$1,000,000.00) (the "Forgiveness Credit"). At the election of the Applicant, upon ten (10) days' prior written notice to the State, the employment positions being created

on the Project Site shall be calculated on each June 30th during the five (5) consecutive fiscal years commencing with the fiscal year ending on the June 30 immediately following the Conveyance Date (as defined in the PDDA), and ending on the June 30 that is four (4) years thereafter (the "Job Calculation Period"). For the purposes of this provision, a full-time employment position is defined as a position that is paid for a minimum of thirty-five (35) hours per week.

The DECD Commissioner shall be presented with documentation from an independent public accountant acceptable to the State certifying the creation of such jobs or such expenditure of funds, prior to the granting of the Forgiveness Credit.

## **PROPERTY RESTRICTIONS**

### **Negative Pledge**

The Applicant agrees that it will execute a Negative Pledge and Agreement ("Negative Pledge") to be recorded on the land records of the Town in a form acceptable to the Commissioner, which Negative Pledge shall provide that, for a period of 15 years, the Applicant shall not sell, lease, transfer, assign, or in any way encumber or otherwise dispose of the Applicant's property, known as the Norwich State Hospital in whole or in part, except to MTGA or an SPE Affiliate (as defined in the PDDA) pursuant to the PDDA, without first obtaining the written consent of the Commissioner or unless such restrictions are permitted in the PDDA. The Negative Pledge shall further provide that no consent of the Commissioner shall be required for, and the Negative Pledge shall not be applicable to, any EURs or ECs imposed as contemplated herein, any conveyance to MTGA or an SPE Affiliate or, following such conveyance, permitted transfers, liens and encumbrances contained in the PDDA. Any prior Negative Pledges encumbering the Property shall be released at the time the Assistance Agreement is executed.

### **Use Restriction**

The Applicant covenants and agrees that the Applicant's property, located at 14, 16, 19, 54, 102, 107, and 111 Route 12 Preston, Connecticut, shall be used in accordance with the uses specified in the PDDA, as amended or as amended and restated, or similar uses including residential, commercial, retail, office, housing and related activities for ten years after the Remediation Project is completed. The Applicant agrees that it shall execute a Declaration of Restrictive Covenant (the "Covenant") in a form acceptable to the Commissioner, which shall be filed on the land records of the Town of Preston. The Covenant shall be enforceable by the State and shall provide that any conveyance of Applicant's property, other than to MTGA, an SPE Affiliate of MTGA or a project development participant pursuant to the PDDA, shall be subject to the terms of the Covenant. The Covenant shall be released following any such conveyance by the

Applicant to MTGA, an SPE Affiliate of MTGA or a project development participant, pursuant to the PDDA.

## **ENVIRONMENTAL COMPLIANCE**

### **Connecticut Environmental Policy Act**

The disbursement of state funds may be subject to the completion of the appropriate Connecticut Environmental Policy Act ("CEPA") review of project activities.

It is noted that a Notice of Scoping was published on July 19, 2016 on the Connecticut Environmental Quality (CEQ) Monitor. DECD concluded that the Project does not require the preparation of an Environmental Impact Evaluation study under CEPA. There is no additional obligation required under CEPA for this phase of the Project. DECD's conclusion was documented at the Post-scoping Notice published on the CEQ Monitor on November 8, 2016.

### **Environmental Condition of the Real Property**

As determined by DECD, the environmental site assessments, survey, reports and remedial action plans will be prepared for real property subject to project activities. One or more professional firms licensed to practice in the State of Connecticut shall prepare the reports. The scope of investigations and report shall conform to the applicable Department of Energy and Environmental Protection regulations and guidance, and/or the applicable American Standards for Testing Materials document standards. Copies of all reports shall be made available to DECD.

If the Applicant and/or other parties for the subject properties within the project area have conducted Environmental Site Assessments, copies of such documents must be submitted to DECD.

### **Brownfield Remediation and Revitalization Program**

The Project Site was enrolled into the Brownfield Remediation and Revitalization Liability Relief Program (BRRP) by DECD in consultation with DEEP on November 28, 2011 according to the provisions of C.G.S. Section 32-769.

Please see Attachment 1 (NHSPProject Timeline 2020-09-24) that details the remediation, abatement and verification schedule (Phase A). The below table summarizes the timeline for the remediation and verification phase.

<b>Item</b>	<b>Description</b>	<b>Timeline (1)</b>
Remedial Planning	Final Investigation Report, RAP Addendum, Engineered Control Application, DEEP/DECD Document Review	Dec. 2021

Remediation	Parcels 2, 5, 7N, 4 and 6 remediation, G & W railroad permitting, utility trenches/tunnels remediation, Consolidation Areas A & B expansion	Dec. 2022
Asbestos Abatement	Abatement of Pipe Pier, underground utilities, Pathway Building and Sewage Plant	Aug. 2022
LEP Verification	EUR preparation and approval, LEP Verification, and CT DEEP Letter of No Audit	Apr. 2023

(1) Can be updated or extended by the Town/PRA in consultation with MTGA, with amendment to the Financing Plan and Budget.

The Applicant's/MTGA's LEP will prepare and submit to DEEP and DECD one or more letter reports that summarize the remediation, abatement and demolition status of each parcel during each phase (Phase A and Phase B). The Applicant's LEP will prepare an amended Remedial Action Plan ("RAP") primarily relating to Phase A to be submitted for DEEP's approval. Any revisions to the plans, cost estimates and timeline for work for Phase A and/or Phase B based on comments from DEEP will be submitted to DECD and DEEP for prior approval. The scope of the work for the various phases and major milestones shall be outlined and described. DECD shall be notified of all requests for ECs, EURs, variances, etc. and shall be provided all major milestone environmental reports. DECD shall also be copied on and notified of the submission of any verification to DEEP and issuance from DEEP of a Letter of No Audit or an Audit Closure Letter, and of any EURs and modifications of EURs.

#### **Abatement and Demolition Plan**

Attachment 2 (Building Abatement/Demolition History) illustrates the buildings/structures that have been abated and demolished, those that will be demolished and those that will be preserved. The Administration Building will be assessed to determine whether it can be preserved and incorporated into any proposed redevelopment by MTGA. The Applicant has provided preliminary estimates for the pending abatement and demolition work.

#### **Property Transfer Program**

The Project Site was identified as an "establishment," as defined by C.G.S. Section 22a-134 (the CT Transfer Act), because of a dry-cleaning facility that historically operated on the main campus. But since the property is in the BRRP Program, it is exempted from the requirements of the CT Transfer Act once the site is transferred from the Town to another entity.

(2) Attachment 2 reference to Administrative Building to be updated from Not Planned to Under Assessment.

### **CONSTRUCTION COMPLIANCE**

DECD requires submission of project design documents, specifications, construction documents and cost estimates and other documents outlined in Schedule A. All submissions are subject to review, comment, and/or approval by the Office of Brownfield Remediation and Development and the Office of the DECD Commissioner.

The Applicant shall submit for review and comment the following construction-related documents which need to comply with the latest version of the DECD Bidding, Contracting and Construction Guidelines: a) bonding and insurance requirements; b) copies of contracts; c) schedule of values; d) payment requisitions and change orders.

DECD requirements for approval of the release of funds for construction include review of construction documents, latest updated budget, submittal of bidding process, project schedule and cash flow updates, progress reports, and any appropriate back up materials as may be needed for review such as application and certificate of payment (AIA Document G702) approved by the architect and/or engineer, appropriate invoices, etc.

Separately for Phase A and Phase B, DECD will hold back the last five percent (5%) of the project funds until all required construction closeout documentation in accordance with DECD Bidding, Contracting and Construction Guidelines is submitted. This includes proof of completion of remediation work funded by DECD funds including, but not limited to, a Remediation Action Report, Verification Report, a recorded copy of the Environmental Use Restriction (EUR), EPA Reports, DEEP Audit, abatement report, demolition report or any other reports requested by the DECD Commissioner.

**Special Waiver:** Since the consultants and contractors listed below have been working with the Applicant and MTGA on the Remediation Project for the past few years and have a great deal of familiarity with the work and the site issues, DECD acknowledges that the Applicant and, with respect to any post-conveyance work, MTGA hereby request a waiver from having to rebid the work for the contractors and consultants listed below. In consideration of the possible delays to the Project and potentially missing the 2021 construction season, the DECD Commissioner provides a waiver to the Applicant and MTGA from rebidding the work. However, new contracts or extensions of existing contracts with the consultants and contractors will have to be executed prior to the Assistance Agreement closing. The DECD Commissioner shall be given an opportunity to review and approve the contract language and amount, which approval shall not be unreasonably withheld since DECD has previously approved these contracts. The rates negotiated for the \$10M Grant will have to be adopted and locked in for the remainder of the Project since the Project is not being rebid, including any post-conveyance work by MTGA in Phase B. All other State and DECD guidelines will have to be followed. List of contractors and consultants:

- Tighe & Bond, Inc. (T&B)
- Manafort Brothers, Inc. (MBI)
- CLA Engineers, Inc. (CLA)
- Construction Solutions Group (CSG)

- Materials Testing, Inc. (MTI)
- Mattern & Stefon Land Surveyors (Mattern)
- Archaeological & Historical Services, Inc. (AHS)
- ALTA Environmental Corporation (ALTA) for Phase B

## **ADMINISTRATIVE AND PROJECT MONITORING PLAN**

The Applicant shall be required to submit to the DECD a project administration plan (the "Project Administration Plan"), acceptable to the DECD, that describes how they will document and monitor the financial and construction oversight of the State funds as required by the Assistance Agreement and as approved in DECD's Project Financing Plan and Budget. The purpose of the Project Administration Plan is to assure the completion of the Project within the approved Financing Plan and Budget and the appropriate use of State funds. The Project Administration Plan should address how State funds will be disbursed in conjunction and in accordance with all contractual agreements. The Project Administration Plan should include the process that they will undertake to approve payment requisitions and project construction change orders. The Project Administration Plan shall be assumable by MTGA or any SPE Affilaite of MTGA following the transfer of the Property with respect to post-conveyance work. The Project Administration Plan shall set forth that such plan shall terminate following the expenditure of all State funds or the completion of the Project (including any required post-conveyance remediation and/or monitoring).

## **REPORTING**

### **Project Audit**

Each Applicant subject to a federal and/or state single audit must have an audit of its accounts performed annually (see Schedule B). The audit shall be in accordance with the DECD Audit Guide (located at <http://www.ct.gov/ecd/cwp/view.asp?a=1096&q=249676>) and the requirements established by federal law and state statute. All Applicants not subject to a federal and/or state single audit shall be subject to a Project-specific audit of its accounts within ninety (90) days of the completion of the Project or at such times as required by the Commissioner. Such audit shall be in accordance with the DECD Audit Guide. An independent public accountant as defined by generally accepted government-auditing standards (GAGAS) shall conduct the audits. At the discretion and with the approval of the Commissioner, examiners from DECD may conduct Project-specific audits.

The completion of the Project will be determined by the end date of the most recently approved Project Financing Plan and Budget.

### **Project Financial Statements**

The Applicant shall provide a cumulative Statement of Program Cost and a Detailed Schedule of Expenditures to the Commissioner in the approved DECD project statement format as outlined in the most current Accounting Manual located at <http://www.ct.gov/ecd/cwp/view.asp?a=1096&q=249670>. This information will be required to be provided within ninety (90) days after the expiration date of the Project Financing Plan and Budget or earlier as determined by the Commissioner. Further information, such as supporting documentation (i.e. copies of invoices, cancelled checks, contracts etc.) for the expenditures charged may be requested from the applicant, as necessary.

#### **Project Progress Reporting**

The Applicant shall submit project milestone and progress reports acceptable to the DECD with each payment request or at any time as requested by the DECD Project Manager. The reports will be due upon request, and will be required to be provided until the expiration of the Project Financing Plan and Budget.

### **REQUIRED DOCUMENTS**

Unless otherwise indicated, the Applicant must provide the following required documents before the Assistance Agreement will be signed by DECD.

1. Completion of Investigation Report - (See Environmental Compliance Section herein).
2. Interim Remedial Action Report with status of work done to date.
3. Updated BRRP Remediation Schedule (see Attachment 1).
4. Status report of abatement and demolition work(see Attachment 2).
5. Amended Remedial Action Plan submitted to DEEP.
6. Post-conveyance plan, soil management plan for addressing impacted soil during redevelopment and estimated costs for remaining remediation, abatement and demolition (after execution of the Assistance Agreement).
7. An amended or amended and restated PDDA between MTGA and the Applicant.
8. Approval by the Applicant, MTGA and DECD of a form of pass-through agreement which shall be attached to the Assistance Agreement which, if determined to be necessary for Phase B, shall be executed between the Applicant, an SPE Affiliate of MTGA and DECD (the "Pass-Through Agreement") prior to the commencement of Phase B.
9. Master Plan; current timeline of opening of the proposed facility and anticipated level of investment by MTGA, and SPE Affiliates of MTGA or other project development participants.
10. Contracts between the Town, MTGA and their remediation/abatement/demolition contractors and consultants (prior to disbursement of any DECD funds), and which, in the case of the Town contracts, may be assignable to MTGA or an SPE Affiliate of MTGA following the transfer of the Property.

#### **PROJECT START/END DATE**

For purposes of this Financial Assistance Proposal, the Project will have a start date of July 21, 2020 and any eligible Applicant project expenditures after that date will be permitted as part of the project. The end date of the project will be determined by the most recently approved Project Financing Plan and Budget.

#### **EXPIRATION**

The Applicant must accept this Financial Assistance Proposal no later than 30 calendar days after the date of this proposal. In the event DECD does not receive the acceptance of this Financial Assistance Proposal by the aforementioned date, the offer will be considered null and void and withdrawn.

#### **INSTANCES OF DEFAULT**

If funding for the Project is approved, the Assistance Agreement between DECD and the Applicant may be subject, but not limited to the following default provisions: breach of agreement, misrepresentation, receivership or bankruptcy, condemnation or seizure, lack of adequate security, violation of terms in other project documents. In addition to repayment in full of the funding, DECD's remedies may include, but not be limited to, the ability to collect an additional 5% in liquidated damages on the total amount of financial assistance, and to charge a 15% per annum rate of interest on financing provided.

#### **CLOSING AND TRANSACTION COSTS**

The Applicant shall be responsible for the payment of all necessary and appropriate costs associated with this transaction, whether or not a closing takes place, including but not limited to the State's attorneys' fees and other such costs incurred by the State or associated with securing the State Financial Assistance. Such costs may also include reasonable attorney fees, appraisal costs, and other possible fees and costs related to the closing. No financing will be provided until the Applicant has paid DECD's legal fees.

#### **LABOR COMPLIANCE**

##### **Nondiscrimination**

The Applicant will comply with Connecticut General Statutes section 4a-60, as may be amended, which prohibits the Applicant from discriminating or permitting discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut.

The Applicant will comply with Connecticut General Statutes Section 4a-60a, as may be amended, which prohibits the Applicant from discriminating or permitting discrimination against any person or group of persons on the grounds of sexual orientation.

#### **Affirmative Action**

The Applicant will comply with Connecticut General Statutes Section 4a-60, which prohibits the Applicant from engaging in or permitting discrimination in the performance of the work involved as well as requires that the company take affirmative action to ensure that all job applicants with job related qualifications are employed and that employees are, when employed, treated in a nondiscriminatory manner.

#### **Executive Orders**

This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland, promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services. If Executive Order 14 is applicable, it is deemed to be incorporated into and made a part of the Agreement as if it had been fully set forth in it. At the Applicant's request, DECD shall provide a copy of these orders to the Applicant.

### **WITHDRAWAL OF FINANCIAL ASSISTANCE PROPOSAL**

Notwithstanding any other provisions of this Financial Assistance Proposal, the State, in its discretion, may elect to withdraw this proposal and withhold payment of funds if:

- The Applicant shall have made to the State any material misrepresentation in the project data supporting the funding request, in the application or any supplement thereto or amendment thereof, or thereafter in the Assistance Agreement, or with respect to any document furnished in connection with the Project; or
- The Applicant shall have abandoned or terminated the Project, or made or sustained any material adverse change in its financial stability and structure, or shall have otherwise breached any condition or covenant, material or not, in this Financial Assistance Proposal and/or thereafter in the Assistance Agreement.

### **ADDITIONAL TERMS AND CONDITIONS**

The Applicant acknowledges that the obligation of DECD to provide the State Financial Assistance set forth herein is subject to the normal State approval process, including but not limited to approval by the State Bond Commission, and may be subject to review and approval of any documentation by the Attorney General as to form and substance.

The State Financial Assistance will be subject to the standard terms and conditions established by DECD for financial assistance under the Sections 32-763 and 32-765 of the Connecticut General Statutes. The Applicant will enter into the Assistance Agreement with the State of Connecticut, acting through DECD, which will contain but not be limited to provisions of this Financial Assistance Proposal, and set forth the terms and conditions of the State Financial Assistance, and will execute and/or deliver such other documents, agreements, and instruments as DECD may require in connection with the State Financial Assistance or any required security.

This Financial Assistance Proposal is not a contract by the State of Connecticut or the Applicant. The State shall not be bound until a contract has all approvals required by law, and is executed in accordance with all applicable State procedures.

#### **COMMUNICATIONS AND OUTREACH**

In any news release or printed material promoting the Project, the Applicant shall give credit, prominently placed, to the Office of Brownfield Remediation and Development, Department of Economic and Community Development. The Office of Brownfield Remediation and Development, Department of Economic and Community Development shall be consulted prior to scheduling public events such as a ribbon cutting or a groundbreaking and will be afforded an opportunity to provide remarks at such an event. The Applicant shall erect and maintain a project sign at the project site in accordance with the specifications provided in the DECD Bidding and Construction Guidelines.

#### **SPECIAL CONDITIONS**

1. The \$2 million of Loan funds will be spent after the \$7 million of Grant funds, unless as otherwise provided in the Assistance Agreement.
2. In line with the SBC's directive to DECD, \$2 million of the Grant funds and \$2 million of the Loan funds set aside for Phase B post-conveyance will be held in escrow at DECD until disbursed from time to time in accordance with the Escrow Release Plan to fund the remediation stages required to support site development in accordance with the Remedial Action Plan for Phase B. Notwithstanding the foregoing, to the extent that the Applicant fails to exhaust the Grant funds set aside for Phase A pre-conveyance, such unused Grant funds shall be added to the escrow for the Phase B post-conveyance.
3. The Applicant shall prepare an amended Remedial Action Plan for Phase A and a demolition/abatement plan as needed that is consistent with MTGA's known redevelopment plans and will provide to DECD for review and approval in a timely manner. Any revisions to the estimated costs and proposed timelines for the Remediation and Verification Phase (Phase A) will have to be approved by the DECD. In no event shall funding for Phase A pre-conveyance exceed \$5 million. Details will be provided in the Project Administration Plan.

4. **Advances of the State Financial Assistance will be on a reimbursement basis based on submissions of invoices and project progress reports submitted by the Applicant. The Applicant shall submit Requisitions for Payment on forms approved by the Commissioner of DECD and shall include all backups (specified in the Project Administration and Monitoring Plan) and certifications and for construction projects a certified (AIA G-702/703) with each request for payment. The Applicant will provide copies of cancelled checks to contractors (or wiring information) to DECD once the payment is made. Funds shall be reimbursed to the Applicant for brownfield cleanup activities on an “as needed basis” and consistent with the Remediation Action Plan(s) and demolition/abatement plan(s). These activities shall include but not be limited to environmental engineering, demolition work and hazardous building materials abatement, and site remediation, and in the case of each of the foregoing on and off site as required or necessary.**
5. **Any change in estimated costs or change orders will be brought to the attention of the DECD Project Managers immediately with proper technical supporting documentation. The Applicant shall use its reasonable efforts and act in good faith to provide that there are sufficient funds to complete the Remediation Project. Value engineering and other recommendations to be cost-efficient will have to be provided to DECD.**
6. **Any Grant funds that are not expended during the demolition/remediation/abatement phase (Phase A and Phase B, collectively) shall stay with the State of Connecticut/DECD.**
7. **The Pass-Through Agreement between and among DECD, the Applicant and an SPE Affiliate of MTGA shall be approved by DECD, the Applicant and MTGA upon execution of the Assistance Agreement and executed prior to the commencement of Phase B (post-conveyance phase) of the Project. Any funds allocated to Phase A of the Project that remain unused at the completion of Phase A will be added to the budget for and held in escrow by DECD for use for Phase B. No DECD funds will be released until the PDDA is amended or amended and restated. The SPE Affiliate of MTGA will have to adhere to standard DECD terms and conditions applicable to State Financial Assistance under the provisions of C.G.S. Sections 32-765 and 32-763 to the extent applicable to the SPE Affiliate. It is the understanding of DECD that the cost to disturb the 4-foot Direct Exposure Criteria (DEC) compliant soil established during Phase A for any Phase B remediation or redevelopment work will be minimal and will in no case exceed the available project funds. After the conveyance of the Property to the SPE Affiliate of MTGA, the SPE Affiliate shall complete the Phase B work in accordance with the Remedial Action Plan and abatement/demolition plan with the remaining Grant and Loan funds, as supplemented if necessary with private financing. The State shall not contribute any additional funds towards the completion of the remediation and redevelopment project above and beyond the \$2,000,000 Loan and the \$7,000,000 Grant. The Town will make sure to arrange to provide all required documentation such as the contracts to DECD.**

**8. As stated in the November 9, 2020 letter from the SHPO Office, but except as may be provided otherwise in the Easement Declaration of Covenants and Declaration of Preservation Restrictions dated September 17, 2012:**

- **All steps will be taken to conduct archeological investigations by the Applicant and MTGA during construction and remediation activities as a part of the Remediation Project, before and after conveyance to the SPE Affiliate of MTGA, to prevent potential impacts to archaeological resources, adopting methods agreed upon with SHPO.**
- **The Administration Building will remain and shall be incorporated into the proposed redevelopment of the Project Site unless either the Applicant or the SPE Affiliate of MTGA shall have demonstrated to SHPO's full satisfaction that there is no prudent or feasible alternative to retain the building pursuant to CEPA and the site development plan, and a suitable mitigation would thus be required.**

**Failure to do the above, will be considered as a material breach of the Assistance Agreement.**

## **DECD CONTACTS**

**Project Manager (Contracts):** Your Project Manager (Contracts) is responsible for coordinating all aspects of the contracting and closeout process of your project as it moves forward. Please consider the Project Manager (Contracts) as your main point of contact throughout the life of your project for contract-related questions.

**Contact: Ned Moore**

**Phone #: 860.500.2448**

**Project Manager (Technical):** Your Project Manager (Technical) is responsible for all environmental, technical, project-scope, and contractor/consultant selection aspects of the project. The Project Manager (Technical) will also be responsible for project monitoring and payment reimbursements. Please copy both Project Managers on all project related emails.

**Contact: Mark Burno**

**Phone #: 860.500.2442**

**Managing Supervisor:** Your Managing Supervisor is also available to you at any time for issues pertaining to all aspects of your project.

**Contact: Binu Chandy**

**Phone #: 860.500.2454**

**CLIENT OBLIGATION CHECKLIST**

The following is a brief outline of the documents that will be required to be provided by the municipality over the life of the agreement. This is not an attempt to define all of the terms and conditions as outlined in this proposal, but to provide a snapshot of the requirements.

General Requirement	Comment	Y E A R S										Status	
		1	2	3	4	5	6	7	8	9	10		
State Single Audit (if applicable) – See Schedule B	Due within 180 days of FYE until all project funds are expended	X	X	X									
Project Financial Statement (Unaudited Balance Sheet and Cumulative Statement of Program Costs)	Due 90 days after the expiration date of the Project Financing Plan and Budget.			X									
Progress Reports	Due upon request or with Client's payment request	X	X	X									

\_\_\_\_\_  
Applicant Initials      Date

**NEXT STEPS**

The enclosed documents, accompanying this Financial Assistance Proposal, must be completed and returned to DECD within thirty (30) calendar days of acceptance of this Financial Assistance Proposal.

- \* Application (on file)
- \* Project Financing Plan and Budget
- \* Certified Resolution

Please return the signed acceptance letter and initialed Client Obligation Checklist to:

Department of Economic and Community Development  
Office of Brownfield Remediation and Development (OBRD)  
450 Columbus Boulevard  
Hartford, CT 06103-1843

Attn: Ned Moore, Suite 5, 4<sup>th</sup> Floor

## **SCHEDULE A (Construction Related Documentation - Brownfield Projects)**

### **Schedule of Submissions and Approvals required for State Assistance**

The DECD will require the Applicant to provide certain documents prior to the start of construction and through the completion of the project. For brownfield projects, "construction" shall be considered any combination thereof of hazardous building materials abatement, demolition, remediation or activities directly related to such items. In addition, DECD will require certain reviews and opportunities for comment during design and construction, through the completion of the project. The following outlines some of these documents and some of the anticipated DECD approvals:

#### **Submissions to DECD – Start of Project to Construction Completion:**

- Schematic Design Plans/Remediation Action Plans
- Contracts with professional consultants and construction/remediation contractors
- Consultant Engineering Reports (including but not limited to, civil/site, environmental site assessments and other environmental reports, geotechnical, and structural)
- CGS 25-68(d) Floodplain Certification Submission (if applicable)
- Appraisal Reports
- Historic and Archeological Surveys, Reports, SHPO Review Letter and Mitigation Deliverables (if applicable)
- Affirmative Action Compliance Reports
- Risk Register
- Environmental Condition Assessment Form (ECAAF) submitted to DEEP
- DEEP's formal response acknowledging receipt of Voluntary Remediation Program (VRP) documentation
- Applicant Single Audit Act Reports
- Third Party Special Inspection Reports
- Progress Reports by Applicant (format to be approved by DECD)
- Meeting Minutes and Correspondence (between owner, architect, environmental consultant/LEP, and/or contractor)

**DECD Site Development Involvement:** DECD requires on and off-site project access on regular basis for review of design and construction developments.

#### **Submissions to DECD Upon Completion of Construction:**

- Project Financial Statement
- Certificate of Occupancy (where applicable)
- Proof of completion of remediation (DEEP Verification Report, Environmental Use Restriction (EUR), and/or DEEP Audit etc. as per applicable regulations.)
- Proof of completion of abatement as per applicable regulations
- Record documents (As Builts)
- Certificate of Substantial Completion (AIA form G704)
- Contractor's Affidavit of Payment of Debts and Claims (AIA form G706)
- Contractor's Affidavit of Release of Liens (AIA form G706A)
- Subcontractors and Suppliers Release or Waiver of Liens

- **Consent of Surety Company to Final Payment (AIA G707)**
- **Consent of Surety to a Reduction in or Partial Release of Retainage at 50% project completion, if applicable: (AIA form G707A) Requires DECD concurrence.**
- **Final Application and Certificate for Payment (AIA form G702, and continuation sheet G703)**

**If the contractor has provided Contractor's Affidavit of Release of Liens (AIA form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage. If these documents are not provided, retainage cannot be paid until 91 days after the date on the Certificate of Substantial Completion.**

**SCHEDULE B**

**TO:** Municipal or Nonprofit Agency Grantee – DECD Program

**FROM:** Donald Lapointe, Supervising Accountant  
Office of Financial Review

**SUBJECT:** DECD and State Single Audit Submission Requirements

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Pursuant to Sections 4-230 through 4-236, as amended, of the Connecticut General Statutes, each municipality, audited agency, tourism district and not-for-profit organization that expends state financial assistance equal to or in excess of three hundred thousand dollars in any fiscal year of such nonstate entity beginning on or after July 1, 2009, shall have a single audit made for such fiscal year in accordance with the provisions of the above-referenced General Statutes. If total state financial assistance expended for the fiscal year is for a single state program, a program-specific audit may be conducted in lieu of a single audit.

Copies of the state single audit report package must be filed with the state grantor agencies, the cognizant agency and pass-through agencies (if applicable). Submission of the report package must be made within 30 days of completion of the audit report, if possible, but no later than six months after the end of the audit period. For recipients with a June 30, 2005 fiscal year end, the filing deadline is December 31, 2005. Cognizant agencies must be notified of the Independent Auditor appointed to conduct the audit. Such notification must be made not later than thirty days before the end of the fiscal year of the entity to be audited.

The Office of Policy and Management is the cognizant agency for municipalities, tourism districts, other quasi-governmental entities and nonprofit organizations under the State Single Audit Act. The Dept. of Economic & Community Development is the cognizant agency for Housing Authorities. Your Cognizant Agency has the authority under C.G.S. Section 7-393 and State Single Audit Regulations to grant an extension for filing an audit report past the statutory deadline. In order for such an extension to be considered, an Audit Submission Extension Request Form must be submitted to the cognizant agency no later than 30 days prior to the required filing date. Both the independent auditor and the Chief executive officer of the audited entity must sign the request. If the reason for the extension relates to deficiencies in the entity's accounting system, a corrective action plan must accompany the request. The request may be faxed to the cognizant agency as indicated on the request form.

The following is a list of the required components of a complete audited financial report package that must be filed by the deadline with your cognizant agency, each State agency that provides funding to you, such as the Dept. of Economic & Community Development, and pass-through agencies (if applicable):

1. The Audit Report on the Financial Statements of the auditee

2. State Single Audit Report or program-specific audit report (if applicable)
3. Federal Single Audit Report (if applicable)
4. Municipal Audit Questionnaire (Municipalities & Audited Agencies)
5. Management Letter (if applicable)
6. Corrective Action Plan (if applicable)
7. Report on Compliance and on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards

The DECD requires that the DECD Audit Guide must be used in conjunction with a State Single Audit of DECD programs. The only additional requirements are that the DECD programs be tested for compliance with laws and regulations using the compliance supplements contained in Appendix A of this guide and that the financial statement format outlined in Exhibit 4-2 of the guide be followed. The DECD *Consolidated Audit Guide for DECD Programs* is available at the following Website: <http://www.ct.gov/ece> under Miscellaneous Publications.

State Single Audit Regulation Sec. 4-236-28, states, "In cases of continued inability or unwillingness to have a proper audit conducted of a program in accordance with these regulations, state agencies shall consider appropriate sanctions concerning the program including but not limited to:

- (a) withholding a percentage of awards until the audit is completed satisfactorily;
- (b) withholding or disallowing overhead costs; or
- (c) suspending state awards until the audit is completed".

Any nonstate entity, which fails to have the audit report filed on its behalf within six months after the end of its fiscal year or within the time granted by the cognizant agency, may be assessed a civil penalty of not less than \$1,000 but not more than \$10,000.

While these are strong measures and in most instances not needed, they define the measures that state agencies and OPM may take to ensure that those grantees receiving state financial assistance submit timely and appropriate audit reports.

In summary, as a grantee of a DECD program, please file the following documents as applicable with DECD and OPM by the dates indicated:

**File the following with the state grantor agency – [DECD, Office of Financial Review, 450 Columbus Boulevard, Hartford, CT 06103-1843]:**

- *Complete Audit Reporting Package* if your entity is subject to filing a State Single Audit (must be submitted within 30 days of completion but no later than the filing period deadline),  
OR
- *State Single Audit Exemption Notification Form* if your entity is exempt from filing a State Single Audit (submit as soon as possible after fiscal year end but no later than six months after your fiscal year end)

**File the following with your cognizant agency – [OPM, Intergovernmental Policy Division, Municipal Finance Services, 450 Capitol Avenue - MS-54MFS, Hartford, CT 06106]:**

- *Auditor Notification Form* (submit no later than thirty days before the end of the fiscal year of the entity to be audited)
- *Extension Request For Filing Financial and State Single Audits* if the audit cannot be filed by the due date (*submit at least 30 days prior to the end of the six-month filing period*)
- *Complete Audit Reporting Package* if subject to filing State Single Audit (*submit within 30 days of completion but no later than the filing period deadline*),
- *State Single Audit Exemption Notification Form* (submit as soon as possible after fiscal year end if you determine that your organization was not subject to the State Single Audit Act but no later than six months after your fiscal year end)

If you have any questions please contact Steve Pons at (860) 500-2409.

Thank you for your attention to these matters.

**Attachments:**

- **Extension Request for Filing Financial and State Single Audit Form**
- **Appointment of Auditor Notification Form**
- **State Single Audit Filing Exemption Notification Form**

**EXTENSION REQUEST FOR FILING  
FINANCIAL AND STATE SINGLE AUDITS**

Pursuant to C.G.S. 7-393 and/or S.S.A. Regulation 4-236-25, a \_\_\_\_\_ day extension  
(Number of days)\*  
for filing the \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Audited Financial Statements \_\_\_\_\_ State Single Audit \_\_\_\_\_ is  
(Fiscal Year Ended) (Check applicable reports)  
requested until \_\_\_\_ / \_\_\_\_ / \_\_\_\_ for \_\_\_\_\_  
(New filing date) (Name of entity)

Entity Federal Employer Identification Number (FEIN): \_\_\_\_\_

Entity Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact Person & Title \_\_\_\_\_

Telephone ( ) \_\_\_\_\_ Facsimile ( ) \_\_\_\_\_ Email \_\_\_\_\_

**Special Reasons For the Request:**

List State Agency(s) providing funds  
(To be completed by entity receiving funds) \_\_\_\_\_

Requested by:  
*Independent Accountant or Accounting Firm* \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Zip \_\_\_\_\_

Telephone ( ) \_\_\_\_\_ Facsimile ( ) \_\_\_\_\_ Email \_\_\_\_\_

\_\_\_\_\_  
Independent Auditor's Signature Date Auditee CEO's Signature Date

Mail or Fax (860) 418-6493 To OPM at least 30 days prior to the end of the 6-month filing period.

<p><b><u>FOR OPM ACTION ONLY</u></b></p> <p>Extension Approved _____ Denied _____ Date ____ / ____ / ____ For OPM _____</p> <p>Date Auditor Notified: ____ / ____ / ____ Date State Agencies Notified: ____ / ____ / ____</p> <p>Comments _____</p>
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\* Requests for extensions should not exceed 30 days per request.  
<http://www.opm.state.ct.us/igp/services/Audits.htm>

**APPOINTMENT OF AUDITOR NOTIFICATION**

**To:** *Office of Policy and Management*  
Intergovernmental Policy Division  
Municipal Finance Services  
450 Capitol Avenue ~ MS-54MFS  
Hartford, Connecticut 06106-1308  
Tel.(860) 418-6400 Fax (860) 418-6493 E-Mail lori.stevenson@po.state.ct.us

**From:** Entity Name \_\_\_\_\_  
Entity Address \_\_\_\_\_  
\_\_\_\_\_ Zip \_\_\_\_\_  
Federal Employer Identification Number (FEIN) \_\_\_\_\_  
Chief Fiscal Officer (Municipal) \_\_\_\_\_  
Executive Director (Nonprofit) \_\_\_\_\_  
Telephone (with area code) \_\_\_\_\_ Facsimile \_\_\_\_\_  
Internet E-Mail Address \_\_\_\_\_  
Chair, Board of Directors (Nonprofit) \_\_\_\_\_  
Telephone Number of Bd. Chairman \_\_\_\_\_

The following information is furnished in compliance with Connecticut General Statutes 7-396 and/or 4-232:

1. Independent Accountant or Accounting Firm Performing the Audit:  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_ Zip \_\_\_\_\_  
State of CT Board of Accountancy CPA Firm Permit to Practice Number \_\_\_\_\_  
Contact Person & Title \_\_\_\_\_  
Telephone (with area code) \_\_\_\_\_ Facsimile \_\_\_\_\_  
Internet E-mail Address \_\_\_\_\_
  2. Fiscal Period(s) of Audit From \_\_\_\_\_ To \_\_\_\_\_, From \_\_\_\_\_ To \_\_\_\_\_
  3. Appointment Date of Auditor \_\_\_\_\_
  4. Name/Title of Appointing Authority \_\_\_\_\_
- <http://www.opm.state.ct.us/igp/services/Audits.htm>

[ORGANIZATION'S LETTERHEAD]

**STATE SINGLE AUDIT**  
**FILING EXEMPTION NOTIFICATION**

Date: \_\_\_\_\_

Lori Stevenson, Executive Secretary  
Municipal Finance Services  
Office of Policy and Management  
450 Capitol Avenue MS#54MFS  
Hartford, CT 06106-1308

Dear Ms. Stevenson,

This letter is to inform the Office of Policy and Management that for our fiscal year, which ended \_\_\_\_\_, the total expenditures of State Financial Assistance was less than \$300,000 for any fiscal year beginning on or after July 1, 2009. Total expenditures of State Financial Assistance for all programs was \$ \_\_\_\_\_.

Based on the guidelines of C.G.S. 4-231(b), we are exempt from filing a State Single Audit for this fiscal period. If you have any questions please contact:

Contact Person: \_\_\_\_\_

Name of Nonprofit: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Zip \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Facsimile ( ) \_\_\_\_\_ Email \_\_\_\_\_

Very truly yours,

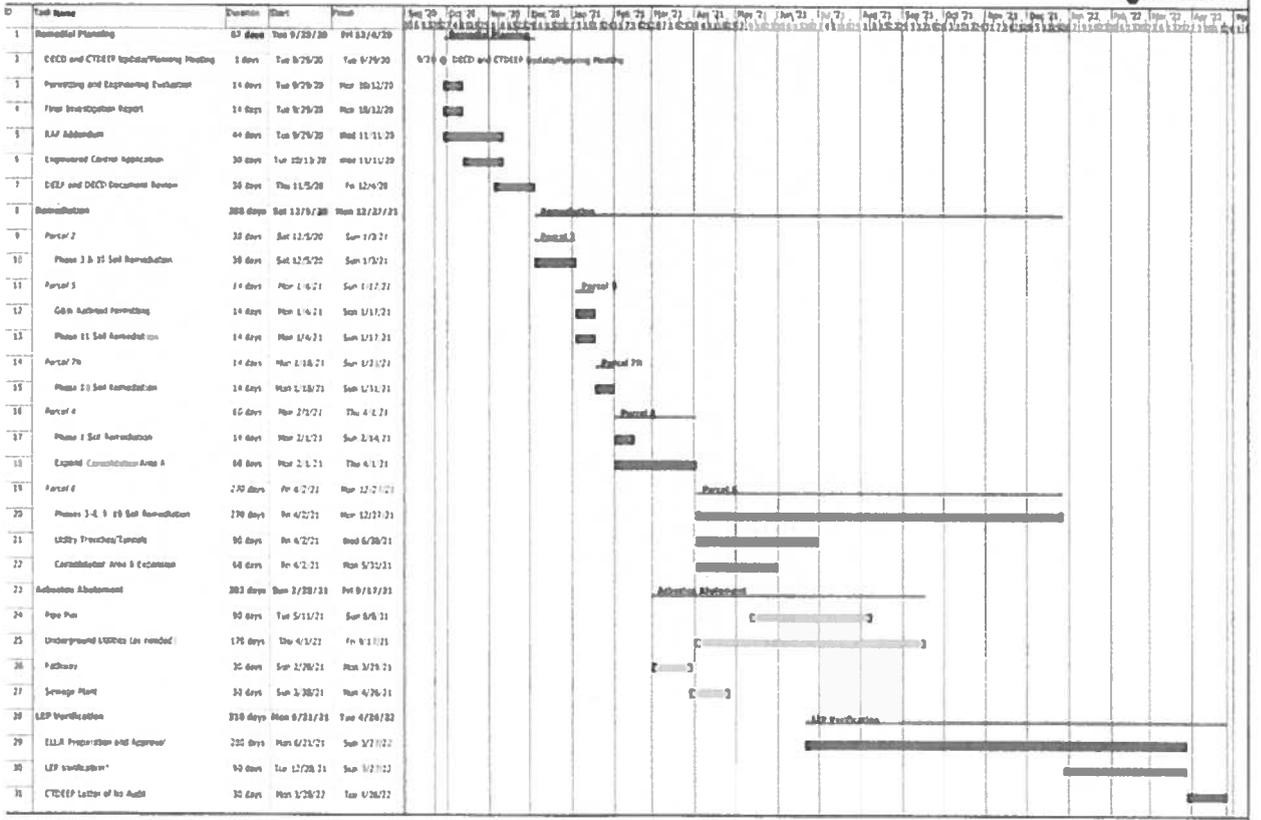
\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Chief Financial Officer

cc: Donald Lapointe, Supervising Accountant  
Office of Financial Review and Special Projects  
Department of Economic and Community Development  
450 Columbus Boulevard  
Hartford, CT 06103-1843

**This form may be returned to OPM by facsimile (860) 418-6493 and DECD by facsimile (860) 270-8200.  
<http://www.opm.state.ct.us/igp/services/Audits.htm>**

**Preliminary Pre-Conveyance Schedule  
Remediation/Abatement Resumption and Completion  
Former Norwich State Hospital/Preston Riverwalk  
September 24, 2010**



\* Certain are approximate and subject to change  
Site Remediation and Engineering Evaluation. Additional time may be required for permitting and engineering tasks  
\* LEP Installation requires 14 day third party review period

Preston Riverwalk  
Building Abatement/Demolition History

Buildings/Structures	Bldg Sq. Ft.	Abated	Demolished	SF Demolished			
Administration Building	22,391						
Awl Building	24,508			24,508			
Beach Bathhouse	270						Completed
Bell Building	45,840			45,840			Remaining Structures
Brigham Building	45,840			45,840			Planned
Butler Building	29,248			29,248			Not Planned
Brewster House	1,255			1,255			
Carpentry Bldg	5,625			5,625			
Chapel	7,617			7,617			
Chiller Building	4,920						
Club House	8,583			8,583			
Cottage A	4,464			4,464			
Cottage A Garage	1,560			1,560			
Cottage B	4,464			4,464			
Cottage C	4,464			4,464			
Cottage C Garage	1,560			1,560			
Cottage I	4,994			4,994			
Cutler	7,500			7,500			
Dix	7,500			7,500			
Earle Building	29,248			29,248			
Electric Transformer Bldg	558			558			
Fieldhouse	1,016			1,016			
Firehouse (old)	485			485			
Gallop Building aka Boneski	46,069						
Galt Building "new firehouse"	35,762			35,762			
Greenhouse	3,891			3,891			
Kettle Building	250,000			250,000			
Kirkbridge Building	26,606			26,606			
Laundry	30,968			30,968			
Lodge Building	96,395			96,395			
Maintenance Garage	4,132			4,132			
Maintenance Office	2,590			2,590			
Maintenance Shop	8,014			8,014			
Mitchell Building	56,069						
Pathway Building	23,566						
Powerhouse "new" oil fired	25,347			25,347			
Ray Building	26,606						
Refrigeration/Tin shop	1,960			1,960			
Ribicoff Building	30,635			30,635			
Russell Building	106,186			106,186			
Salmon Building	24,508			24,508			
Sewage Aeration	500						
Sewage Plant	1,575						
Dry Bed 1 & 2	150						
Sewage Pump House	241						
Seymour Building	32,156			32,156			
Staff House / Credit Union	8,264			8,264			
Staff House Garage	1,500			1,500			
Stedman Building	31,472			31,472			
Stribling Building	20,086			20,086			
Swill House	422			422			
Theater Dance Hall / Storage	79,396			79,396			
Transportation	5,760			5,760			
Valve Room #1	600			600			
Valve Room #2	600			600			
Well Pump House	594			594			
White Building	7,500			7,500			
Woodward Building	31,472			31,472			
Fuel Oil Tanks (2) 750K gal	5,652			5,652			
500 ft Pier							
Tunnels	42,300			38070			
Pipe Support & Bridge	360			360			
<b>TOTALS</b>	<b>1,333,814</b>			<b>1,147,227</b>			

SRM Preliminary Pre Post Contingency Cost Breakout

Item	Options	Est. CV	Contractor Est. Cost	Development Integrated Option	Pre-Contingency	Post-Contingency
<b>Remediation</b>						
Phase 1	1	140				
	2	-				
	3	140				
Phase 2		522				
Phase 4		704	\$284,830	\$284,830	\$284,830	\$0
Phase 5		1,636				
Phase 6		778				
Phase 8		533				
Phase 10		384				
Phase 11		5,011				
Phase 7	1	7,000	\$241,000	\$241,000	\$241,000	\$0
	2	8,000	\$400,000			
Phase 8	1	2,964	\$420,000	\$420,000	\$420,000	\$0
	2	1,000	\$89,000	\$89,000	\$89,000	\$0
Phase 11	1	10,000	\$380,000			
	2	1,000	\$473,000			
Tunnels	1	1,644	\$81,000	\$81,000	\$81,000	\$0
	2	4,109	\$176,000			
Utility Trenches	1	47,913	\$1,976,890			
Obstructed	2	27,518	\$916,715	\$916,715	\$916,715	\$0
Expand Consolidation Area A			\$185,000	\$185,000	\$0	\$185,000
Expand Consolidation Area B				\$1,000,000	\$500,000	\$500,000
<b>Sub Total</b>				\$3,203,563	\$2,518,568	\$685,000
<b>Abatement</b>						
Remediation	Pipe Fill	1	\$450,000	\$450,000	\$450,000	\$0
	Leach Field	1	\$100,000	\$100,000	\$100,000	\$0
	RCM Pipe in (2)	1	\$567,000	\$567,000	\$0	\$567,000
	RCM Pipe in (2)	1	\$573,000	\$573,000	\$0	\$573,000
<b>Sub Total</b>				\$1,690,000	\$550,000	\$1,140,000
<b>Abatement/ Demo</b>						
Remediation Buildings	Batcher	1	\$270,000			
		2	\$376,000			
	Captop	1	\$280,000			
		2	\$18,000			
	Air	1	\$130,000			
		2	\$72,000	\$72,000		
	Pipe Fill	1	\$276,000			
		2	\$130,000			
	Pathway	1	\$135,000	\$135,000	\$135,000	\$0
	Geo-Aggs Plate	1	\$400,000			
	Chiller	1	\$36,000			
	Asphalt	1	\$180,000			
<b>Sub Total</b>				\$107,000	\$135,000	\$0
<b>Remed/Abate Total</b>				\$5,100,563	\$3,203,568	\$1,825,000
Soft Costs	T&B		\$432,400	\$432,400	\$0	\$0
	ES&EA, M&M, MII		\$156,000	\$156,000	\$0	\$0
<b>Soft Cost Total</b>			\$588,400	\$588,400	\$0	\$0
<b>G&amp;M Permit and Oversight</b>				\$40,000		
<b>Utility Activities</b>			\$1,000,000		\$0	\$1,000,000
<b>Overall Sub-Total</b>			\$6,702,963	\$3,805,968	\$2,825,000	
30% Contingency			\$2,010,890	\$1,141,785	\$1,147,500	
<b>Grand Total</b>			\$8,713,853	\$4,947,753	\$3,972,500	
<b>Rounding Amount (M&amp;M Soft Costs)</b>			\$286,141	\$0	\$286,141	
<b>DEED Administration/Legal</b>				\$120,000		
<b>Loan Amount</b>			\$9,000,000	\$1,067,753	\$3,971,500	
<b>30% Contingency (Loan Adj)</b>			\$7,000,000			

# Project Financing Plan and Budget



Department of Economic and Community Development

Initial Submission:   X    
 Revision #: \_\_\_\_\_

<b>Applicant:</b> <u>Town of Preston</u>	<b>For Internal Use Only</b>
<b>Project Name:</b> <u>Preston Riverwalk Part III BF Grant</u>	<b>Program Title:</b> <u>BF Grant, Sec. 32-763</u>
<b>Social Sec. #:</b> _____	<b>Project #:</b> <u>2020-114-075-10000</u>
<b>Federal ID #:</b> <u>60-6002069</u>	
<b>Budget Period</b>	<b>Budget Period Approved by DECD</b>
<b>Start</b> <u>October 1, 2021</u>	<b>Start</b> <u>10/1/2021</u>
<b>End</b> <u>December 31, 2026</u>	<b>End</b> <u>12/31/2026</u>
<b>THE FOLLOWING APPLIES TO HOUSING PROJECTS ONLY:</b>	
<b>Units Counted By:</b> ( ) Beds ( ) Bedrooms	
<b>Total Units:</b> _____	<b>Assisted Units:</b> _____
<b>Unit Mix:</b> 0BR _____ 1BR _____ 2BR _____ 3BR _____ 4BR _____	

**NON-DECD FUNDS**

<b>SOURCES OF FUNDING</b>	CASH		DECD FUNDS		TOTAL
	IN-KIND	GRANT - A	LOAN - B		
Private Investment				\$	-
Bank Financing				\$	-
CT. Development Authority				\$	-
CT. Innovations, Inc.				\$	-
CHFA				\$	-
DECD Program #1 <u>BF Loan, Sec. 32-765</u>			\$ 2,000,000		2,000,000
DECD Program #2 <u>BF Grant, Sec. 32-763</u>		\$ 7,000,000			7,000,000
Other _____				\$	-
_____				\$	-
_____				\$	-
<b>TOTAL SOURCES</b>	\$ -	\$ 7,000,000	\$ 2,000,000	\$	9,000,000

*Approval of the Project Financing Plan and Budget for State Assistance in the amount shown in the above summary and for the time period indicated is hereby requested. It is understood that the project will be operated in accordance with the Project Financing Plan and Budget approved by the Connecticut Department of Economic and Community Development.*

Date Submitted: \_\_\_\_\_ Applicant: Town of Preston

Authorized Signature: Sandra L. Allyn -Gauthier Title: First Selectwoman

**FOR INTERNAL USE ONLY**

The Project Financing Plan and Budget is hereby approved in the amounts and for the time period indicated.

Signed: \_\_\_\_\_  
 Date: \_\_\_\_\_  
Alexandra Daum, Deputy Commissioner

Signed: \_\_\_\_\_  
 Date: \_\_\_\_\_  
David Lehman, Commissioner

Submission Date: _____	Initial Submission: [ X ]	Revision #:
Applicant Name: <u>Town of Preston</u>		
Project Name: <u>Preston Riverwalk Part III</u>		

Acct. Code	PROJECT INCOME DETAIL	DECD PROJECT PHASE A	DECD PROJECT PHASE B	OTHER FUNDS:	TOTAL FUNDS
1310.1	SALE OF LAND OR BLDGS				\$ -
1310.2	RENTAL OF LAND OR BLDGS				\$ -
1310.3	SALE OF SALVAGE OR EQUIP.				\$ -
1310.4	INVESTMENT INTEREST				\$ -
1310.5	SITE NET INCOME				\$ -
1310.6	OTHER PROJECT INCOME				\$ -
	<b>TOTAL PROJECT INCOME</b>	\$ -	\$ -	\$ -	\$ -

Acct. Code	USES SUMMARY	DECD PROJECT PHASE A	DECD PROJECT PHASE B	OTHER FUNDS:	TOTAL FUNDS
1405	LAND	\$ -	\$ -	\$ -	\$ -
1410	OTHER DEVELOP EXPENSES	\$ -	\$ -	\$ -	\$ -
1415	ADMINISTRATION	\$ 35,000	\$ -	\$ -	\$ 35,000
1420	CARRYING CHARGES				\$ -
1425	ARCHITECTURAL & ENGINEERING	\$ 602,400	\$ 285,145		\$ 887,545
1430	CONSTRUCTION	\$ 3,203,600	\$ 2,825,000		\$ 6,028,600
1435	OTHER WORKING CAPITAL				\$ -
1440	CAPITAL COSTS				\$ -
1445	RESEARCH & DEVELOPMENT				\$ -
1450	FURNISHINGS/EQUIPMENT				\$ -
1455	CONTINGENCY	\$ 1,159,000	\$ 889,855		\$ 2,048,855
	<b>TOTAL PROJECT COSTS</b>	\$ 5,000,000	\$ 4,000,000	\$ -	\$ 9,000,000

	USES	DECD PROJECT PHASE A	DECD PROJECT PHASE B	OTHER FUNDS:	TOTAL FUNDS
<b>1405</b>	<b>LAND</b>				
1405.1	LAND COST/SITE ACQ				\$ -
1405.2	APPRAISAL FEES				\$ -
1405.3	SITE IMPROVEMENTS				\$ -
1405.4	WATER/UTILITY HOOKUPS				\$ -
					\$ -
					\$ -
					\$ -
	<b>TOTAL LAND</b>	\$ -	\$ -	\$ -	\$ -

<b>1410</b>	<b>OTHER DEVELOPMENT EXPENSES</b>				
1410.1	TRAINING				\$ -
1410.2	DEVELOPER'S FEE				\$ -
1410.3	RELOCATION				\$ -
1410.4	REVOLVING LOAN FUND				\$ -
					\$ -
					\$ -
	<b>TOTAL OTHER DEVELOP EXPENSE</b>	\$ -	\$ -	\$ -	\$ -



Submission Date: \_\_\_\_\_ Initial Submission: [ X ] Revision #: \_\_\_\_\_  
 Applicant Name: Town of Preston  
 Project Name: Preston Riverwalk Part III

Acct. Code	USES	DECD PROJECT PHASE A	DECD PROJECT PHASE B	OTHER FUNDS:	TOTAL FUNDS
<b>1430</b>	<b>CONSTRUCTION (Attach additional schedules as needed)</b>				
1430.1	GENERAL CONSTRUCTION				\$ -
1430.2	LEASEHOLD IMPROVEMENTS				\$ -
1430.3	PERMITS				\$ -
1430.4	DEMOLITION				\$ -
1430.5	ENVIRONMENTAL REMEDIATION	\$ 2,518,600	\$ 685,000		\$ 3,203,600
1430.6	ABATEMENT	\$ 685,000	\$ 2,140,000		\$ 2,825,000
					\$ -
					\$ -
	<b>TOTAL CONSTRUCTION</b>	<b>\$ 3,203,600</b>	<b>\$ 2,825,000</b>	<b>\$ -</b>	<b>\$ 6,028,600</b>
<b>1435</b>	<b>OTHER WORKING CAPITAL</b>				
1435.1	ACCOUNTS RECEIVABLE				\$ -
1435.2	INVENTORY				\$ -
					\$ -
					\$ -
					\$ -
					\$ -
	<b>TOTAL OTHER WORKING CAPITAL</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>1440</b>	<b>CAPITAL COSTS</b>				
1440.1	MACHINERY & EQUIPMENT				\$ -
1440.2	APPRAISAL (M & E)				\$ -
					\$ -
					\$ -
					\$ -
					\$ -
	<b>TOTAL CAPITAL COSTS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>1445</b>	<b>RESEARCH &amp; DEVELOPMENT</b>				
1445.1	RESEARCH AND DEVELOPMENT				\$ -
					\$ -
					\$ -
	<b>TOTAL RESEARCH &amp; DEVELOPMENT</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>1450</b>	<b>FURNISHINGS/EQUIPMENT</b>				
1450.1	OFFICE EQUIPMENT				\$ -
1450.2	COMPUTER SOFTWARE				\$ -
1450.3	COMPUTER EQUIPMENT				\$ -
					\$ -
					\$ -
	<b>TOTAL FURNISHINGS/EQUIPMENT</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>1455</b>	<b>CONTINGENCY</b>				
1455.1	CONTINGENCY	\$ 1,159,000	\$ 889,855		\$ 2,048,855
	<b>TOTAL CONTINGENCY</b>	<b>\$ 1,159,000</b>	<b>\$ 889,855</b>		
	<b>TOTAL PROJECT COST</b>	<b>\$ 5,000,000</b>	<b>\$ 4,000,000</b>	<b>\$ -</b>	<b>\$ 9,000,000</b>
	LESS: PROJECT INCOME (if applicable)	\$ -	\$ -	\$ -	\$ -
	<b>NET PROJECT COST</b>	<b>\$ 5,000,000</b>	<b>\$ 4,000,000</b>	<b>\$ -</b>	<b>\$ 9,000,000</b>

**SCHEDULE A - SALARIES**

<b>Submission Date:</b> _____	<b>Initial Submission:</b> [    ]	<b>Revision #:</b> [    ]
<b>Applicant Name:</b> _____		
<b>Project Name:</b> _____		

**Salaries/Cash (Paid) - Job description must be submitted for each position**

Position	Annual Salary	# of Positions	% Charged to this Project	Total Salaries Paid
<b>Total Salaries Paid</b>				<b>\$ -</b>

**Salaries/In-Kind (Not Paid with Project Funds) - Job description must be submitted for each position**

Position	Annual Salary	# of Positions	% Charged to this Project	Total Salaries Paid
<b>Total Salaries Paid</b>				<b>\$ -</b>

**EXHIBIT B**  
(Copy of Note)

**PROMISSORY NOTE**

**\$2,000,000.00**

\_\_\_\_\_, 2022  
**Hartford, Connecticut**

FOR VALUE RECEIVED, the undersigned, the TOWN OF PRESTON, a municipal corporation with an office at 389 Route 2, Preston, Connecticut, (the "Applicant"), promises to pay to the order of the STATE OF CONNECTICUT, acting by and through its DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT ("State"), at its office at 450 Columbus Boulevard, Hartford, Connecticut 06103 or at such other place as the holder hereof (including State, hereinafter referred to as "Holder") may designate, the sum of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) or such lesser amount as may be due and payable to State under the terms and conditions of that certain Assistance Agreement of even date herewith by and between Applicant and State (the "Assistance Agreement"), the terms of which are incorporated by reference herein, together with interest on the unpaid balance of this Note at the rate set forth in Section 2(a) hereof, which interest shall be computed and payable as set forth therein, together with all taxes levied or assessed on this Note or the debt evidenced hereby against the Holder, and together with all reasonable costs, expenses and reasonable attorneys' and other reasonable professionals' fees incurred in any action to collect and/or enforce this Note or to enforce, protect, preserve, defend, realize upon or foreclose any security agreement, or other agreement securing or relating to this Note, including without limitation, all reasonable costs and expenses incurred to enforce, protect, preserve, defend or sustain the lien of said security agreement, or other agreement or in any litigation or controversy arising from or connected in any manner with said security agreement, or other agreement, or this Note. Applicant further agrees to pay all reasonable costs, expenses and reasonable attorneys' and other reasonable professionals' fees incurred by Holder in connection with any "workout" or default resolution negotiations involving legal counsel or other professionals and further in connection with any re-negotiation or restructuring of the indebtedness evidenced by this Note. Any such costs, expenses and/or fees remaining unpaid after demand therefor, may, at the discretion of the Holder, be added to the principal amount of the indebtedness evidenced by this Note.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Assistance Agreement.

This Note has been executed and delivered subject to the following terms and conditions:

1. **Lawful Interest.** Notwithstanding any provisions of this Note, it is the understanding and agreement of the Applicant and Holder that the maximum rate of interest to be paid by Applicant to Holder shall not exceed the highest or the maximum rate of interest permissible to be charged under the laws of the State of Connecticut. Any amounts paid in excess of such rate shall be considered to have been payments in reduction of principal.

2. Payments of Principal and Interest.

(a) This Note shall not bear interest until the later of May 1, 2026 or the fifth anniversary of the conveyance of the Property to MTGA (or an SPE Affiliate of MTGA or a project development participant), or a later date if and to the extent necessary to conform to a change occurring by operation of the terms of the PDDA, as may be amended (the "Deferral Date"). The principal amount of this Note then outstanding shall begin to bear interest at a rate of one percent (1.0%) per annum ("Loan Interest Rate") commencing on the Deferral Date.

Commencing on the first day of the month following the Deferral Date, and continuing on the first day of each and every month thereafter until the date which is twenty (20) years from the date of the final Assistance Agreement, payments of principal and interest shall be due and payable ("Maturity Date").

(b) The entire indebtedness under this Note, including, all outstanding principal (including amounts not forgiven or repaid), accrued and unpaid interest, if any, and any other obligations due hereunder or under the Assistance Agreement, shall be due and payable in full on the Maturity Date.

(c) Payments in respect of this Note shall be made payable to "The State of Connecticut, Department of Economic and Community Development".

(d) The principal amount of this Note is subject to forgiveness in accordance with the following:

(i) If the developer of the Project, MTGA (or its affiliates or project development participants), shall have invested a minimum of Two Hundred Million Dollars (\$200,000,000.00) on the Project Site prior to the Deferral Date, the DECD Commissioner on behalf of the State will forgive the full amount of the Loan (the "Forgiveness Credit").

(ii) ALTERNATIVELY, for each one hundred (100) permanent, full-time employment positions being created on the Project Site prior to the Deferral Date, and maintained for twelve (12) consecutive months at any time during the Job Calculation Period ("Forgiveness Threshold"), the State will forgive the lesser of (a) the outstanding principal balance of the Loan or (b) One Million and No/100 Dollars (\$1,000,000.00) (the "Forgiveness Credit"). At the election of the Applicant, upon ten (10) days' prior written notice to the State, the employment positions being created on the Project Site shall be calculated on each June 30th during the five (5) consecutive fiscal years commencing with the fiscal year ending on the June 30 immediately following the Conveyance Date (as defined in the PDDA), and ending on the June 30 that is four (4) years thereafter (the "Job Calculation Period"). For the purposes of this provision, a full-time employment position is defined as a position that is paid for a minimum of thirty-five (35) hours per week.

The DECD Commissioner shall be presented with documentation from an independent public accountant acceptable to the State certifying the creation of such jobs or such expenditure of funds, prior to the granting of the Forgiveness Credit.

3. Late Charge. In the event Applicant fails to pay any installment of principal and/or interest within fifteen (15) days of the date when said amount was due and payable and has not been paid, without in any way affecting the Holder's right to accelerate this Note, a late charge equal to five percent (5%) of such late payment shall, at the option of Holder, be assessed against Applicant and be due upon demand by the Holder.

4. Prepayments. The Applicant may prepay principal of this Note, in whole or in part, at any time without penalty or premium. Any and all prepayments shall be applied first to accrued and unpaid interest and then to unpaid principal in the inverse order of maturity, and shall not affect the obligation of Applicant to pay the regular installments required hereunder until the entire indebtedness has been paid except as otherwise provided in the Assistance Agreement.

5. Instances of Default. The Applicant agrees that the occurrence of an Instance of Default under the Assistance Agreement shall constitute an "Instance of Default" hereunder. Upon the occurrence of any Instance of Default, which remains uncured past any applicable cure period, if any, the entire indebtedness with accrued interest thereon and any other sums due under this Note, shall, at the option of the Holder, become immediately due and payable without presentment or demand for payment, notice of non-payment, protest or any other notice or demand of any kind, all of which are expressly waived by the Applicant. Failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Upon the occurrence of any Instance of Default default interest may be charged in accordance with Section 4.2(C)(4) of the Assistance Agreement.

6. No Waiver. No delay or omission by Holder in exercising any rights hereunder, nor failure by the Holder to insist upon the strict performance by Applicant of any terms and provisions herein shall operate as or be deemed to be a waiver of such right, any other right hereunder, or any terms and provisions herein, and the Holder shall retain the right thereafter to insist upon strict performance by the Applicant of any and all terms and provisions of this Note or any document securing the repayment of this Note. No waiver of any right shall be effective unless in writing and signed by Holder, nor shall a waiver on one occasion be constituted as a bar to, or waiver of, any such right on any future occasion.

7. Prejudgment Remedy and Other Waivers. APPLICANT ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION AND WAIVES APPLICANT'S RIGHTS TO NOTICE AND HEARING, OR THE ESTABLISHMENT OF A BOND, WITH OR WITHOUT SURETY, UNDER CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, OR AS OTHERWISE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH HOLDER MAY DESIRE TO USE, AND FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST, AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE, AND ALL RIGHTS UNDER ANY STATUTE OF LIMITATIONS. THE APPLICANT ACKNOWLEDGES THAT APPLICANT MAKES THESE WAIVERS KNOWINGLY AND VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER. THE APPLICANT FURTHER ACKNOWLEDGES THAT THE LENDER

HAS NOT AGREED WITH OR REPRESENTED TO APPLICANT OR ANY OTHER PARTY HERETO THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

8. Jury Waiver. THE APPLICANT HEREBY WAIVES TRIAL BY JURY IN ANY COURT AND IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS NOTE IS A PART AND/OR THE ENFORCEMENT OF ANY OF ITS RIGHTS AND REMEDIES, INCLUDING WITHOUT LIMITATION, TORT CLAIMS. THE APPLICANT ACKNOWLEDGES THAT APPLICANT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER. THE APPLICANT FURTHER ACKNOWLEDGES THAT THE HOLDER HAS NOT AGREED WITH OR REPRESENTED TO APPLICANT OR ANY OTHER PARTY HERETO THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

9. Miscellaneous. The provisions of this Note shall be binding upon the successors and assigns and shall inure to the benefit of Holder, its successors and assigns. If any provision of this Note shall, to any extent, be held invalid or unenforceable, then only such provision shall be deemed ineffective and the remainder of this Note shall not be affected. This Note shall be governed by and construed in accordance with the laws of the State of Connecticut (but not its conflicts of law provisions).

[Signature Page to Promissory Note]

**TOWN OF PRESTON**

By: \_\_\_\_\_  
Sandra L. Allyn-Gauthier  
Its First Selectwoman  
Duly Authorized

Dated: \_\_\_\_\_

**EXHIBIT C**

[Applicant's Writings]  
NONE

**EXHIBIT D**  
(form of Pass-Through Agreement)

**EXHIBIT D**

**PASS-THROUGH AGREEMENT  
by and among**

**THE STATE OF CONNECTICUT**  
(acting by and through its  
Commissioner of the Department of Economic and Community Development),

**THE TOWN OF PRESTON**  
and

**[NAME OF MTGA AFFILIATE]**

THIS PASS-THROUGH AGREEMENT (the "Agreement") is entered into as of its Effective Date (as said term is defined in Section 4.13 of this Agreement) by and among \_\_\_\_\_, a limited liability company formed under the laws of the Mohegan Tribe of Indians of Connecticut, with offices located at \_\_\_\_\_ (the "MTGA AFFILIATE"), the **TOWN OF PRESTON**, a municipal corporation duly created and existing under the laws of the State of Connecticut, acting herein by and through its First Selectwoman, with its principal offices located at 389 Route 2, Preston, Connecticut (the "**Applicant**"), and the **STATE OF CONNECTICUT**, acting herein by and through its Commissioner of the Department of Economic and Community Development, with an office located at 450 Columbus Boulevard, Hartford, Connecticut 06103 (the "**State**", the "**Commissioner**" or "**DECD**").

**WITNESSETH THAT,**

**WHEREAS**, pursuant to a certain Assistance Agreement between the State and the Applicant, a copy of which is attached hereto as **Exhibit A** and is made a part hereof (the "**Assistance Agreement**") and certain other Project Documents (such term as used in this Agreement has the meaning set forth in the Assistance Agreement), the State has agreed to provide the Applicant with a grant in the amount of **SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00)** under the Municipal Brownfield Grant Program under Section 32-763 of the Connecticut General Statutes (the "**Grant**") and a loan in the amount of **TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00)** from the Targeted Brownfield Development Loan Program under Section 32-765 of the Connecticut General Statutes ( the "**Loan**"), for a project entitled "*Preston Riverwalk Brownfield Project-Part II/III*" (the "**Project**"); and

**WHEREAS**, the Project consists of a pre-conveyance remediation and verification phase ("**Phase A**") and a post-conveyance phase ("**Phase B**"); and

**WHEREAS**, Phase A of the Project has been completed and the Applicant has conveyed the Subject Property (such term as used in this Agreement has the meaning set forth in the Assistance Agreement) to MTGA AFFILIATE;

**WHEREAS**, the Applicant intends to provide TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) of the Loan funds and TWO MILLION AND NO/100 (\$2,000,000.00) of the Grant funds plus any amounts unexpended during Phase A of the Project (collectively "**Phase B Funds**") to MTGA AFFILIATE on the condition that the MTGA AFFILIATE shall then implement Phase B of the Project pursuant to this Agreement; and

**WHEREAS**, MTGA AFFILIATE, the Applicant and the State have approved the Financing Plan and Budget with respect to Phase B of the Project; and

**WHEREAS**, the Town and MTGA AFFILIATE are willing to utilize the Phase B Funds for the intended uses and purposes of Phase B of the Project and the State will agree to permit the same, subject to compliance with and satisfaction of the terms and conditions set forth in this Agreement by MTGA AFFILIATE with respect to any portion of the Phase B Funds which are released by DECD and passed through to MTGA AFFILIATE by the Applicant;

**NOW, THEREFORE**, in consideration of the mutual obligations, covenants, and promises of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, State, MTGA AFFILIATE, and the Applicant hereby agree as follows:

#### **Article 1 OBLIGATIONS RELATED TO THE PHASE B FUNDS**

1.1 Agreement to Provide Funds. On the basis of and in reliance on the representations, warranties and covenants of MTGA AFFILIATE in this Agreement and any other documents incident hereto, and subject to compliance with and full satisfaction of each of the terms and conditions of this Agreement, the Applicant agrees to request the Phase B Funds from DECD as provided in the Assistance Agreement and then deliver and pass through such Phase B Funds to MTGA AFFILIATE. The Applicant and MTGA AFFILIATE will be responsible for administering Phase B of the Project consistent with any standards as required as a condition of the providing the Phase B Funds.

1.2 Terms and Conditions. The parties hereto acknowledge and agree that the Applicant's and MTGA AFFILIATE's requisition and use of the Phase B Funds shall be subject to the terms and conditions of the Assistance Agreement, and MTGA AFFILIATE shall have the same obligations to the Applicant and to the State as the Applicant has to the State thereunder with respect to the use of the Phase B Funds for Phase B of the Project. MTGA AFFILIATE hereby agrees to indemnify and hold the Applicant harmless with respect to any and all claims made by the State with respect to the enforcement by the State of any obligation of the Applicant under the Assistance Agreement as it pertains to the use of the Phase B Funds for Phase B of the Project. This Section 1.2 shall in no way limit or reduce the scope of the Applicant's obligations to the State under the Assistance Agreement.

1.3 General Administration. The Applicant and MTGA AFFILIATE will follow all procedures and requirements as may be required by the State in respect the Phase B Funds and Phase B of the Project, and provide to the State all supporting documents and forms as may be required.

1.4 Special Conditions. MTGA AFFILIATE hereby agrees to abide by and comply with the special conditions set forth in Article 6 of the Assistance Agreement to the extent such special conditions are applicable to the Phase B Funds and Phase B of the Project.

1.5 Successors and Assigns. For the purposes of this Agreement, the term "Applicant" or "MTGA AFFILIATE" shall mean and include any successor or assigns of the Applicant and MTGA AFFILIATE, including any representative of the Applicant and MTGA AFFILIATE under the provisions of any state or Federal law governing bankruptcy, insolvency, receivership or reorganization.

## **Article 2 MTGA AFFILIATE WARRANTIES, COVENANTS, AND OBLIGATIONS**

MTGA AFFILIATE represents, warrants and covenants as follows, and further covenants that on and after the closing and for so long as this Agreement or any clause thereof shall remain in effect:

2.1 Form of Entity. MTGA AFFILIATE is a limited liability company- duly created and validly existing under the laws of the Mohegan Tribe of Indians of Connecticut and is qualified as a foreign limited liability company under the laws of the State of Connecticut. Further, MTGA AFFILIATE will preserve and maintain its existence as a limited liability company duly organized, validly existing, and in good standing under the laws of the Mohegan Tribe of Indians of Connecticut and will remain qualified to do business under the laws of the State of Connecticut.

2.2 Ability to Conduct Business. MTGA AFFILIATE has all franchises, permits, licenses, and other similar authorizations necessary for the conduct of its business as now being conducted by it, and it is not aware of any state of facts that would make it impossible or impractical to obtain any similar authorization necessary for the conduct of its business as planned to be conducted. MTGA AFFILIATE is not in violation, nor will the transactions contemplated by this Agreement or the Assistance Agreement, cause a violation of the terms or provisions of any such franchise, permit, license, or similar authorization.

2.3 Authorization to Enter Into and Execute Agreement. The execution and delivery of this Agreement by MTGA AFFILIATE, and the performance of its obligations hereunder, are within its power, have been duly authorized by all necessary action on its part, and are not in contravention of law nor in contravention of its organizational documents or operating agreement or of the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.

2.4 Other Authorization Unnecessary. No consent, license, or approval from any governmental authority is or will be necessary for the valid execution and delivery by MTGA AFFILIATE of this Agreement. MTGA AFFILIATE agrees that nothing in this Agreement relieves it from any obligation under law to obtain any such license, consent, or approval.

2.5 Agreement to Undertake Phase B of the Project. MTGA AFFILIATE agrees to undertake and complete Phase B of the Project as described in this Agreement and the Assistance

Agreement.

2.6 Obstacles to Entering and Executing Phase B of the Project.

(A) Existing Suit or Other Action. There is no action, suit, proceeding or investigation at law, in equity, or before any court, public board, arbitrator, or body, pending or, to MTGA AFFILIATE's knowledge, threatened against or affecting it, which could or might adversely affect Phase B of the Project, any of the transactions contemplated by this Agreement, the validity of this Agreement or the Assistance Agreement, or MTGA AFFILIATE's ability to discharge its obligations under this Agreement or the Assistance Agreement.

(B) Default of Existing Orders or Instruments. MTGA AFFILIATE is not in default beyond any applicable notice and grace periods with respect to any order of any court, arbitrator, or governmental body which could or might adversely affect Phase B of the Project, or any of the transactions contemplated by the Assistance Agreement or the validity of the Assistance Agreement, or the MTGA AFFILIATE's ability to discharge its obligations under this Agreement. In addition, the MTGA AFFILIATE is not in default beyond any applicable notice and grace periods in the performance, observance or fulfillment of any of the terms, obligations, covenants, conditions, or provisions contained in any agreement or instrument to which the MTGA AFFILIATE is a party or to which its property is subject, which default, together with all such defaults, singularly or in the aggregate, may have a materially adverse effect on the business, assets, liabilities, financial condition, results of operations or business prospects of the MTGA AFFILIATE.

(C) Instance of Cross Default. No Instance of Cross Default (as such term is defined in Section 3.1 of this Agreement) has occurred or is continuing, and MTGA AFFILIATE has no knowledge of any currently existing facts or circumstances which, with the passage of time or the giving of notice, or both, would constitute an Instance of Cross Default.

2.7 Indemnification. For purposes of this Agreement, "Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum. "Records" means all working papers and such other information and materials as may have been accumulated by MTGA AFFILIATE in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form. "Goods" means all things which are movable at the time that the Agreement is effective and which includes, without limiting this definition, supplies, materials and equipment.

(A) MTGA AFFILIATE shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Agreement in respect of Phase B of the Project, including the acts of commission or omission (collectively, the "Acts") of MTGA AFFILIATE or MTGA AFFILIATE Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts, this Agreement or Phase B of the Project. MTGA AFFILIATE shall use counsel reasonably acceptable to the State in carrying out

its obligations under this Section 2.7. MTGA AFFILIATE's obligations under this Section 2.7 to indemnify, defend and hold harmless against Claims includes Claims concerning (i) the confidentiality of any part of or all of MTGA AFFILIATE's bid or proposal, and (ii) Records, intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, or Goods furnished or used in the performance of the Agreement.

(B) MTGA AFFILIATE shall not be responsible for indemnifying or holding the State harmless from any liability solely from the negligence of the State or any other person or entity acting under the direct control or supervision of the State or from the negligence of the Applicant or any Applicant Parties.

(C) MTGA AFFILIATE shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of MTGA AFFILIATE or any MTGA AFFILIATE Parties. The State shall give MTGA AFFILIATE reasonable notice of any such Claims.

(D) MTGA AFFILIATE's duties under this Section 2.7 shall remain fully in effect and binding in accordance with the terms and conditions of this Agreement, without being lessened or compromised in any way, even where MTGA AFFILIATE is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims, except as otherwise provided in subsection (B) of this Section 2.7.

(E) This Section 2.7 shall survive the expiration or earlier termination of this Agreement and shall not be limited by reason of any insurance coverage.

(F) MTGA AFFILIATE hereby agrees to indemnify and hold harmless the State from and against any liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, arising out of or in connection with the any lien or claim under Conn. Gen. Stat. § 22a-452a, as amended, or other federal, state, or municipal statute, regulation, rule, law, or proceeding relating to environmental matters caused by MTGA AFFILIATE in its implementation of Phase B of the Project. Such indemnity shall survive the expiration or earlier termination of this Agreement.

(G) For purposes of this Agreement, "MTGA AFFILIATE Party", or "MTGA AFFILIATE Parties" shall mean MTGA AFFILIATE's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom MTGA AFFILIATE is in privity of oral or written contract (i.e. subcontractor) and MTGA AFFILIATE intends for such other person or entity to perform under this Agreement in any capacity.

## 2.8 Freedom of Information.

(A) Confidential Information. The State will afford due regard to the MTGA AFFILIATE'S request for the protection of proprietary or confidential information which the State receives. However, all materials associated with this Agreement are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations

and interpretations. In making such a request, MTGA AFFILIATE may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that MTGA AFFILIATE believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of MTGA AFFILATE that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of this Agreement, the records and the specifications, conflicts or is in any way inconsistent with this Section 2.8, this Section 2.8 controls and shall apply and the conflicting provision or part shall not be given effect. If MTGA AFFILIATE indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "CONFIDENTIAL", the State will endeavor to keep said information confidential to the extent permitted by law. The State, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. MTGA AFFILIATE shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the State have any liability for the disclosure of any documents or information in its possession which the State believes are required to be disclosed pursuant to the FOIA or other requirements of law.

(B) Disclosure of Records. This Agreement may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

2.9 Compliance with Laws, Regulations, Rules, and Executive Orders. During the implementation of Phase B of the Project, MTGA AFFILIATE hereby agrees to abide and be bound by all of the rules, regulations, laws and executive orders, including all employment practices and non-discrimination requirements, set forth in Section 2.11, Section 2.12 and Section 2.13 of the Assistance Agreement.

2.10 Campaign Contribution and Solicitation Prohibitions. For all State contracts as defined in Section 9-612 of the Connecticut General Statutes having a value in a calendar year of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) or more or a combination or series of such agreements or contracts having a value of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) or more, the authorized signatory of MTGA AFFILIATE to this Agreement represents that they have received the State Elections Enforcement Commission's notice

advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

2.11 Conflict of Interest. MTGA AFFILIATE will adopt and enforce measures appropriate to assure that no member of MTGA AFFILIATE'S governing bodies and none of its officers or employees shall have or acquire voluntarily an interest in any agreement or proposed agreement in connection with the undertaking or carrying out of Phase B of the Project.

2.12 Insurance. Upon the execution of this Agreement, MTGA AFFILIATE shall obtain and thereafter maintain all required insurance in amounts, form, substance and quality acceptable to the State, as described more fully in **Exhibit B** attached to this Agreement and made a part hereof. A certificate evidencing such insurance shall be delivered to the Commissioner at the time of execution of this Agreement, and annually thereafter for the duration of the Agreement.

### Article 3 – DEFAULT

3.1. Instances of Default. The occurrence of any of the following events shall constitute a default under this Agreement (an "MTGA AFFILIATE Instance of Default"):

(A) Breach of Agreement. If MTGA AFFILIATE fails to perform any act, duty, obligation or other agreement contained herein or fails to forebear from any unpermitted act, or if MTGA AFFILIATE abandons or terminates Phase B of the Project or takes such steps that such an abandonment or termination is imminent.

(B) Misrepresentation. If any representation or warranty made by MTGA AFFILIATE in this Agreement proves at any time to be incorrect in any material respect when made.

(C) Unpaid Judgments. If a judgment or judgments for the payment of money shall be rendered against MTGA AFFILIATE relating to Phase B of the Project and any such judgment shall remain unpaid, unstayed on appeal, unbonded, undischarged or undismissed for a period of ninety (90) consecutive days.

(D) Receivership or Bankruptcy. If MTGA AFFILIATE shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; (ii) be unable or admit in writing its inability to pay its debts as they mature; (iii) file or permit the filing of any petition or reorganization or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or make an assignment for the benefit of creditors or consent to any form of arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its properties; or (iv) take any action for the purpose of effecting any of the foregoing.

(E) Condemnation or Seizure. If any Federal, state or local governmental instrumentality, body or agency shall condemn, seize or otherwise appropriate, or take custody or control of all or any substantial portion of the properties or assets of MTGA AFFILIATE.

### 3.2. Events in Instances of Default.

(A) Notice of Default. If an MTGA AFFILIATE Instance of Default shall occur, material or otherwise, the Commissioner shall provide written notice of the breach (“Notice of Default”) to MTGA AFFILIATE by overnight or certified mail, return receipt requested, to the most current address furnished for the purposes of correspondence.

(B) Opportunity to Cure. The Commissioner shall provide MTGA AFFILIATE thirty (30) days after the Notice of Default, or such longer period of time as the Commissioner may determine and set forth in writing, to cure or remedy the default or breach. Said cure or remedy will not be effective unless accepted, in writing, by the Commissioner. The Commissioner may determine that permitting an opportunity to cure a default could materially jeopardize Phase B of the Project or would not be in the best interests of the State. Under those circumstances, no opportunity to cure need be given and the Commissioner may seek other remedies.

(C) Remedies. Upon the occurrence of an MTGA AFFILIATE Instance of Default, the State, acting by the Commissioner, shall have, to the full extent permitted by law, each and all of the following remedies in addition to those provided for in other portions of this Agreement:

(1) To suspend all further payments by the State to the Applicant for pass through to MTGA AFFILIATE until such noncompliance is cured to the satisfaction of the Commissioner;

(2) To proceed to enforce the performance or observance of any obligations, agreements, or covenants of MTGA AFFILIATE in this Agreement;

(3) To declare the entire amount of the Phase B Funds to be immediately due and payable and to bring any and all actions at law or in equity as may be necessary to enforce said obligation of repayment. In such MTGA AFFILIATE Instances of Default and remedy to the State, MTGA AFFILIATE shall be obligated to repay immediately to the Applicant, for repayment to the State, the entire amount of the Phase B Funds received by MTGA AFFILIATE, and liquidated damages equal to five percent (5%) of the total amount of the Phase B Funds received;

(4) The right to injunction or similar relief against MTGA AFFILIATE because of such default or breach; and

(5) The right to maintain any and all actions at law or suits in equity, including receivership or other proper proceedings, to cure or remedy any defaults or breaches of covenants under this Agreement.

## **Article 4 - DISBURSEMENT OF PHASE B FUNDS AND PHASE B ADMINISTRATION**

4.1 Disbursement of Phase B Funds to MTGA AFFILIATE. MTGA AFFILIATE agrees to submit to the Applicant a payment request and any and all information necessary for

the Applicant to submit a requisition form as required by Section 3.2(B) of the Assistance Agreement to bring about the transfer of Phase B Funds to the Account (such term as used herein shall have the meaning set forth in Section 3.2(B) of the Assistance Agreement). Upon the transfer of such funds to the Account, the Applicant shall promptly pay the amounts set forth in any such payment request to MTGA AFFILIATE or to those contractors designated by MTGA AFFILIATE in the payment request in accordance with the terms and conditions of the Assistance Agreement.

4.2 Personal Service Contracts. MTGA AFFILIATE agrees that all cost items incurred in the implementation of Phase B of the Project, except those to be performed by volunteers and those to be performed by employees of MTGA AFFILIATE who will not receive extra compensation from Phase B Funds for such service, shall be performed pursuant to a written contract, and MTGA AFFILIATE shall, upon request, provide the Commissioner and/or the Applicant with copies of all such contracts.

4.3 Audit and Inspection of Project and Records.

(A) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, or where applicable, federal agencies, may, at reasonable hours, inspect and examine all of the parts of the real property on which MTGA AFFILIATE performs Phase B of the Project under this Agreement.

(B) MTGA AFFILIATE shall maintain, and shall require each of the MTGA AFFILIATE Parties to maintain, accurate and complete Records with respect to the Phase B Funds and Phase B of the Project. MTGA AFFILIATE shall make all of its and the MTGA AFFILIATES' Records available at all reasonable hours for audit and inspection by the State and its agents.

(C) The State shall make all requests for any audit or inspection in writing and shall provide MTGA AFFILIATE with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

(D) MTGA AFFILIATE will pay for all costs and expenses of any audit and inspection which reveals information that is sufficient to constitute a breach by MTGA AFFILIATE under this Agreement. MTGA AFFILIATE will remit full payment to the State for such audit or inspection no later than thirty (30) days after receiving an invoice from the State.

(E) MTGA AFFILIATE shall keep and preserve or cause to be kept and preserved all of its and MTGA AFFILIATES Parties' Records until three (3) years after the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, MTGA AFFILIATE shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

(F) MTGA AFFILIATE shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and MTGA AFFILIATE shall cooperate with an exit conference.

(G) MTGA AFFILIATE must incorporate this entire Section 4.3 into any contract or other agreement it enters into with any MTGA AFFILIATE Party.

(H) MTGA AFFILIATE shall be subject to a Project-specific audit of its accounts for Phase B of the Project within ninety (90) days of the completion of Phase B of the Project or at such times as required by the Commissioner. Such audit shall be in accordance with the DECD Audit Guide, located at <https://portal.ct.gov/-/media/DECD/OFR/DECD-Audit-Guide-January--2019.pdf>. An independent public accountant as defined by generally accepted government auditing standards (GAGAS) shall conduct the audit. At the discretion and with the approval of the Commissioner, examiners from the DECD may conduct the Project-specific audit. If the Applicant is having an audit performed with respect to the entire Project, including, without limitation, the use of the Phase B Funds and the implementation of Phase B of the Project by MTGA AFFILIATE, then MTGA AFFILIATE shall not be required to have a separate audit performed under this Section 4.3.

4.4 Reports, Financial Statements, Progress Reporting and Construction Compliance. MTGA AFFILIATE agrees to provide to the Applicant such documentation and information with respect to the use and expenditure of the Project B Funds and the implementation of Phase B of the Project as may be requested by the Applicant to comply with its obligations to the State under Section 3.5, Section 3.6, Section 3.7, Section 3.8 and Section 3.9 of the Assistance Agreement

## Article 5 - MISCELLANEOUS PROVISIONS

### 5.1 Nonwaiver & Sovereign Immunity.

(A) If the State does not exercise, or delays in exercising, or exercises in part any of the State's rights and remedies set forth in this Agreement for the curing or remedying of any default or breach of covenant or condition, or any other right or remedy, in no event shall such non-exercise, delay or partial exercise be construed as a waiver of full action by the State or a waiver of any subsequent default or breach of covenant or condition.

(B) The parties acknowledge and agree that nothing in the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Agreement. To the extent that this subsection (B) conflicts with any other section of this Agreement, this subsection (B) shall govern.

5.2 Severability. If any term or provision of the Agreement or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Agreement or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be

invalid or unenforceable. Each remaining term and provision of the Agreement shall be valid and enforced to the fullest extent possible by law.

5.3 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. Transmittal of the signatures of the parties to this Agreement by email or facsimile shall be deemed as effective as an original signature thereon.

5.4 Notices. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Agreement (collectively, “Notices”) are deemed to have been received two (2) days after the date that the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or one (1) day after the date sent if placed with a recognized, overnight express delivery service that provides for a return receipt. Any notice to the Applicant or MTGA Affiliate pursuant to this Agreement may be served in person or by mail. Any such requirement shall be deemed met by any written notice personally served at the principal place of business of the Applicant or MTGA Affiliate, as applicable, or at such other address as the Applicant or MTGA Affiliate shall notify the Commissioner, or mailed by depositing it in any post office station or letter box enclosed in a postage-paid envelope addressed to the Applicant at Town of Preston, 389 Route 2, Preston, CT 06365 or at such other address as provided above. Any notice to MTGA AFFILIATE shall be ~~addressed~~ at \_\_\_\_\_. Any notice to the State, Department, or Commissioner shall be addressed to the Commissioner at 450 Columbus Boulevard, Hartford, Connecticut 06103.

5.5 Headings, Number and Gender. The headings given to the Sections in the Agreement are inserted only for convenience and are in no way to be construed as part of the Agreement or as a limitation of the scope of the particular Section to which the heading refers. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

5.6 Amendments; Supremacy and Entirety of Agreement.

(A) No amendment to or modification of this Agreement shall be valid or binding unless made in writing, signed by the parties and approved by the Connecticut Attorney General. Any and all documents authorized in connection with this Agreement shall be subject to the terms of this Agreement. This Agreement contains the complete and exclusive statement of the terms agreed to by the parties.

(B) In the event that the Applicant or MTGA AFFILIATE seeks modification in the form of a consent or a subordination to financing required by the Applicant or MTGA AFFILIATE in its normal course of business, the Applicant or MTGA AFFILIATE shall request such modification in writing to the Commissioner not less than thirty (30) days prior to the date such modification is required. The Applicant or MTGA AFFILIATE, as applicable, shall promptly reimburse the State for expenses, including reasonable attorneys’ fees, incurred in negotiating and entering into such modification.

5.7 Provision of Other Documents. Upon the request of the Commissioner, the Applicant and the MTGA AFFILIATE shall execute and deliver or cause to be executed and delivered such further documents and instruments and do such further acts and things as the Commissioner may request in order to effectuate more fully the purposes of Phase B of the Project and to vest more completely in and assure to the Commissioner its rights under this Agreement with respect to the Phase B Funds and Phase B of the Project.

5.8 Assignment. MTGA AFFILIATE shall not assign any of its rights or obligations under this Agreement, voluntarily or otherwise, in any manner without the prior written consent of DECD. DECD may void any purported assignment in violation of this Section 5.9 and declare the Applicant and MTGA AFFILIATE in breach of this Agreement. Any termination by DECD for a breach is without prejudice to DECD's or the State's rights or possible claims.

5.9 Survival of Representations. All warranties, representations and covenants made by the Applicant and MTGA AFFILIATE in this Agreement or in any certificate or instruments delivered to the State in connection with the Phase B Funds shall be considered to have been relied upon by the Commissioner and shall survive until the later of: (i) ten (10) years after disbursement of all Phase B Funds; or (ii) repayment of any portion of the Phase B Funds payable pursuant to the Project Documents. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties; provided, however, that nothing in this provision shall imply that the Applicant or MTGA AFFILIATE has the right or authority to assign its rights, duties or obligations hereunder without the written consent of the Commissioner.

5.10 Governing Documents. In the event of any conflict between this Agreement and any of the Project Documents, this Agreement, sans Exhibits, shall be controlling.

5.11 Third Parties. This Agreement is between the State, MTGA AFFILIATE and the Applicant only and shall not be relied upon by any third party.

5.12 Effective Date. This Agreement shall have the date this Agreement is signed by the Commissioner as the Effective Date.

5.13 Forum and Choice of Law. The parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. The parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Applicant and MTGA AFFILIATE waive any objection which they may now have or will have to the laying of venue of any claims in any forum.

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**EXHIBIT A**

Copy of the Assistance Agreement

## **EXHIBIT B**

### **Insurance Requirements for Non-Profit and For-Profit Entities**

(A) Before commencing performance, the MTGA AFFILIATE shall obtain and maintain, or shall cause any MTGA AFFILIATE Party to obtain and maintain, at its or their own cost and expense, for the duration of the Agreement, the following insurance as described in (1) through (7) below for Phase B of the Project and only to the extent applicable to Phase B of the Project; provided however, that if this project is (i) financial assistance of less than ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), (ii) a planning grant, or (iii) a predevelopment loan, only items 1 and 2 as set forth herein shall apply.

(1) Commercial General Liability: ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operation, Independent Contractors, Product and Completed Operations and Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the Agreement or the general aggregate limit shall be twice the occurrence limit.

(2) Workers' Compensation and Employer's Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) each accident, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) Disease – Policy limit, ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) each employee.

(3) Automobile Liability: ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.

(4) Directors and Officers Liability: ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) per occurrence limit of liability; provided, however, that Directors and Officers Liability insurance shall not be required for limited liability companies or limited partnerships.

(5) Comprehensive Crime Insurance: ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) limit for each of the following coverages: Employee Dishonesty (Form O), Forgery/Alteration (Form B), and Money and Securities coverage for Theft, Burglary, Robbery, Disappearance and Destruction.

(B) Additional Insurance Provisions

(1) The State of Connecticut Department of Economic and Community Development, its officials and employees shall be named as an Additional Insured on the Commercial General Liability policy. Additional Insured status is not required for items (A)2 through (A)7 above.

(2) Described insurance shall be primary coverage and MTGA AFFILIATE or MTGA AFFILIATE Party and its insurer shall have no right of subrogation recovery or subrogation against the State of Connecticut.

(3) MTGA AFFILIATE or MTGA AFFILIATE Party, as applicable, shall assume any and all deductibles in the described insurance policies.

(4) Without limiting MTGA AFFILIATE's or MTGA AFFILIATE Party's obligation to procure and maintain insurance for the duration identified in (A) above, each insurance policy shall not be suspended, voided, cancelled or reduced except after thirty (30) days prior written notice by certified mail has been given to the State of Connecticut, with the exception that a ten (10) day prior written notice by certified mail for non-payment of premium is acceptable.

(5) Each policy shall be issued by an Insurance Company licensed to do business by Connecticut Department of Insurance and having a Best Rating of A-, VII, or equivalent or as otherwise approved by DECD.