

ESTABLISHING THE MYSTIC VALLEY DEVELOPMENT COMMISSION

"Consolidated Act" including amendments

Section 11 of Chapter 294 of the Acts & Resolves of 1996

(a) The following words, whenever used in this section have the following meanings:

"Affected project area", real property situated within the project area which was rehabilitated by the commission or other party and made available by or through the commission or is subject to an agreement with the commission governing its disposition or use.

"Blighted open area", a predominantly open area which is detrimental to the safety, health or sound growth of a community and which is predominantly open because it is unduly costly to develop it soundly through the ordinary operations of private enterprise. Factors which might make an area unduly expensive to develop include but are not limited to: existence of hazardous materials or other contaminants, existence of ledge, rock, unsuitable soil, or other physical conditions, need for unduly expensive excavation, fill or grading, need for unduly expensive foundations or retaining walls, need for unduly expensive waterproofing, drainage or flood prevention measures, need for unduly expensive measures to protect adjacent areas and the water tables therein, need for unduly expensive measure incident to building around or over rights-of-way through the area, existence of obsolete, inappropriate or otherwise faulty platting or subdividing, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership, inadequate transportation facilities, inadequate systems, and special assessments delinquencies, a substantial change in business or economic conditions or practices, an abandonment or cessation of work begun on improvements, any combination of the above, or any other condition or conditions which are detrimental to the safety, health, morals or sound growth of a community.

"Commission", the Mystic Valley Development Commission, a public body politic and corporate created pursuant to subsection three.

"Decadent area", an area which is detrimental to the safety, health or sound growth of a community because of the existence of buildings which are physically deteriorated, unfit for human habitation, obsolete, or in need of major maintenance, or renovation, or repair, or because of much of the real estate in recent years has been sold or taken for nonpayment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air or open space, or because of excessive land coverage, or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

"Department", division of housing and community development.

"Federal government", the United States of America, and any agency or instrumentality corporate or otherwise of the United States of America.

"Federal legislation", any legislation of the congress of the United States relating to federal assistance for clearance of decadent or blighted open areas, city or regional planning, economic development, rehabilitation, relocation or any related matters, and any regulations authorized thereunder.

"Municipal officers", the city council with the approval of the mayor. The municipal officers are hereby designated as the local governing body for purposes of any approval or action of such body required by federal legislation.

"Participating cities", such of the cities of Malden, Medford and Everett as accept the provisions of this section pursuant to subsection three hereof.

"Plan", the detailed plan, as it may exist from time to time, for the project, which plan shall comply with all requirements prescribed by federal legislation in order to qualify for the project for federal financial assistance. The plan shall describe: (a) the boundaries of the project area; (b) proposed land acquisition, demolition, removal, rehabilitation of structures, redevelopment and general public improvements within the project area; (c) land which is to be acquired or rehabilitated; and (d) zoning and planning changes, if any, and proposed land uses, maximum densities and building requirements. The plan shall provide for the assessment and collection of property taxes in accordance with the provisions of subsection (j) and shall describe the method for relocation of persons and organizations displaced by the project.

"Project", the Mystic Valley Development Project, a project to be undertaken in accordance with the plan (1) for the development of an industrial and office park and residential housing through the collaboration of government at all levels, public and private institutions of higher education, and private enterprise; which park may include, among other activities, facilities for the carrying on of research and development and production of innovative and advanced communication technologies, and (2) for the elimination of and for the prevention of the spread of decadent or blighted open areas included within the project area and covered by the plan through the development of the industrial and office park within the project area, including the restoration and renewal of portions of such area by a program of voluntary repair and rehabilitation of buildings or other improvements or by the acquisition by gift, purchase or eminent domain of land and improvements thereon, if any, and demolition, removal rehabilitation or reconstruction of any such improvements whenever necessary to permit the development of the industrial and office park. "Project" may also include the provision of financial and other assistance in the relocation of persons and organizations displaced as a result of carrying out the project, the installation, construction or reconstruction of public and private ways; public utilities and services, off-street parking lots, traffic systems and other like improvements necessary for carrying out the objectives of the project, together with such site improvements as are necessary for the preparation of any sites for uses in accordance with the plan, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise or public charitable agencies, including sale by the commission itself for commercial, industrial, public, charitable or other uses in accordance with the plan. The term "redevelopment" shall include "development".

"Project area", those portions of the areas in the cities of Malden, Medford and Everett which are within the boundaries of the parcel shown on the plan entitled "Massachusetts Communications Technology Park - Everett - Malden - Medford" prepared by Cecil & Rizvi, Incorporated, Dated October tenth, nineteen hundred and ninety-five (the "project map").

Project Area shall also include:

(1) a certain parcel of land in Everett bounded by Norman street to the north and by the Saugus branch of the Boston and Maine Railroad line on the east, both of which are bounded by Air Force road in the city of Everett; and

(2) a certain parcel of land in Everett, described as follows:

Northeasterly by Tremont Street, three hundred ninety-six and 35/100 feet;

Southeasterly by land formerly of Benjamin Hadley et al, one hundred five and 71/100 feet;

Southwesterly by land now or formerly of the Boston and main Railroad, four hundred two and 26/100 feet;

Northwesterly by said Railroad land and land now or formerly of the City of Everett, one hundred and thirty-two and 10/100 feet.

"Relocation payments", payments whether or not required by federal legislation made by the commission as reimbursement or compensation for the reasonable moving expenses necessarily incurred and any actual, direct loss or property, except good will or profit, suffered by individuals, families, business concerns and nonprofit organizations, resulting from displacement, if such displacement is reasonably required to carry out the plan or because of the acquisition of property by the commission. Such relocation payments shall not include reimbursement or compensation for any expenses or losses for which reimbursement or compensation would be otherwise made, nor shall any person have any right of action for relocation payments, except as provided by federal legislation or chapter seventy-nine A.

(b) The Provisions of this section are hereby declared to be severable and if any such provision or the application of such provision to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this section or application of such provision to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent that this section would have been adopted had such invalid or unconstitutional provisions not been included therein.

(c) There is hereby created a public body politic and corporate to be known as the Mystic Valley Development Commission which shall consist of members from at least two of the participating cities; provided that the legal existence of the commission shall not commence unless and until on or before December thirty-first, nineteen hundred and ninety-six, the municipal officers of at least two of the participating cities shall have voted to accept the provisions of this section. Any participating city which has not accepted the provisions of this section on or before such date, may thereafter, with the consent of the municipal officers of each of the cities previously voting to accept the provisions of this section, accept the provisions of this section and become part of the commission.

(d) The commission shall be managed, controlled and governed by a board of either five or seven members selected and serving as provided in this subsection.

(1) The mayor of each participating city and one designee appointed by the mayor from time to time shall each serve as a member of the board of the commission; provided, however, that the mayor shall have the right to appoint an individual to act as a member of the board in the stead of the mayor. The mayor shall have the right to change any such appointment during the balance of the mayor's existing term.

(2) The governor or his designee shall serve as an ex officio member of the board.

(3) In the event that only two cities accept the provisions of this section, the board of the commission shall consist of five members. When the board consists of five members, three members shall constitute a quorum. In the event that three cities accept the provisions of this section, the board of the commission shall consist of seven members, of whom five shall constitute a quorum.

(4) Any person assuming the position of a member of the commission shall file a certificate of such assumption with the department. If the department finds that the commission has been duly organized and constituted, the department shall issue a certificate of organization to the commission and such certificate shall be conclusive evidence of the lawful organization of the commission and of the appointment of the members thereof. Every member shall serve until the qualification of his or her successor. Whenever the membership of the commission is changed by appointment, election, resignation or removal, a certificate and duplicate certificate to that effect shall be promptly so filed. A certificate so filed shall be conclusive evidence of the change in membership of the commission referred to therein.

(5) Notwithstanding anything in the section to the contrary:

(i) the mayor of each participating city shall have an absolute veto power over any action by the commission as that action applies to that city, the city council of that city having no power to override such veto. This veto shall be exercised within thirty days of the commission's taking action.

(ii) no action taken by the commission shall be binding on any participating city unless all commission members representing such city vote to approve such action as it applies to such city;

(iii) no commission member representing one participating city shall have the right to act to prevent the commission from taking any action with respect to the other participating cities.

(e) The commission shall elect from among its members a chairman and vice chairman, and a secretary and treasurer. Each member shall serve without compensation. The commission may employ counsel, an executive director and such other officers, agents and employees as it deems necessary or proper. The commission shall have the right to contract with and the authority to delegate to any public agency qualified and authorized to carry out urban redevelopment activities, as set forth in subsection (s), to carry out the functions of the commission and to act as the agent of the commission. The commission may delegate to such agent such powers and duties as said commission deems necessary or proper for the carrying out of any action determined to be undertaken by said commission.

(f) Unless otherwise provided in this section, the commission shall have the following powers:

(1) to sue and be sued; to have a seal; to have corporate succession;

(2) to act as agent of, or to cooperate with the federal government in any project which it is authorized to undertake;

(3) to receive loans, grants and annual or other contributions from the federal government or from any other source, public or private, and to establish and administer such programs within the project area or within a participating city as are necessary or desirable to qualify for, obtain or expend such loans, grants or other funding.

(4) to take by eminent domain pursuant to chapter 79 or chapter 80A of the General Laws property which is in a blighted open or decadent area within a participating city which property has been designated as property to be taken under the plan, provided that the mayor of such participating city has authorized the commission to exercise such powers with respect to such property;

(5) to acquire by purchase, lease, gift, bequest or grant, and hold clear, repair, or operate any property, real or personal or any interest therein, found by it to be necessary or reasonably required to carry out the purposes of this section, or any of its sections; and to sell, exchange, transfer, lease or assign the same, provided, that in case of a

taking by eminent domain under said chapter seventy-nine, the provisions of section forty of said chapter shall be applicable, except that the security therein required shall be deposited with the mayor of the city in which the property to be taken is situated. Except as herein otherwise provided, the provisions of chapters seventy-nine and eighty A relative to counties, cities, towns and districts, so far as pertinent, shall apply to the commission and the members of the commission shall act on its behalf under those chapters.

(6) to clear and/or improve any property acquired by it;

(7) to engage in or contract for the construction, reconstruction, alteration, remodeling or repair on any property acquired by it;

(8) to make relocation payments to persons and businesses displaced as a result of carrying out the project;

(9) to borrow money for any of its purposes upon the security of its bonds, notes or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it or by pledge of its revenue, including without limitation grants or contributions by the federal government, or in any other lawful manner, and in connection with the incurrence of any indebtedness to, covenant that it shall not hereafter mortgage the whole or any specified part of its property or pledge the whole or any specified part of its revenues;

(10) to invest in securities legal for the investment of funds of savings banks any funds held by it and not required for immediate disbursement;

(11) to enter into agreements with the federal government and with the participating cities containing such covenants, terms and conditions as the commission may deem desirable;

(12) to enter into, execute and carry out contracts and all other instruments necessary or convenient to the exercise of the powers granted in this section;

(13) to make, and from time to time amend or repeal, subject to the approval of the department, by-laws, rules and regulations, not inconsistent with pertinent rules and regulations of the department to govern its proceedings and effectuate the purposes of this act;

(14) to determine what areas within its jurisdiction constitute decadent or blighted open areas with the concurrence of the mayor of the participating city in which such areas are located:

(15) to prepare the plan for the clearance and development, or conservation and rehabilitation of decadent or blighted open areas for purposes of the project, including a program of voluntary repair and rehabilitation of buildings and improvements and a program for the demolition and removal of buildings and improvements;

(16) to prepare or cause to be prepared a workable program for development of the project;

(17) to enforce restrictions and controls contained in the plan or any covenant or agreement contained in any contract, deed or lease by the commission or in any applicable activity and use limitation, as defined in section 2 of chapter 21E of the General Laws, notwithstanding that the commission may no longer have any title to or interest in the property to which such restrictions and controls apply or to any neighboring property;

(18) to conduct investigations, make studies, surveys and plans and disseminate information relative to development of the project and the project area, including desirable patterns for land use, relocation, and any other matter deemed by it to be material in connection with any of its powers and duties, and to make such studies, plans and information available to the federal government, to agencies or subdivisions of the commonwealth and to interested persons;

(19) to receive gifts, loans, grants, contributions or other financial assistance from the federal government, the commonwealth, the participating cities or any other sources;

(20) to implement, upon a majority vote of the commission, the assessing of the payments in lieu of property taxes, betterment assessments and other fees and charges provided for subsection (j) with respect to the affected project area and to exercise such powers as may be granted to cities and towns under the General Laws to permit such cities and towns to collect such taxes, to enable the collection of such payments in lieu of taxes, assessments and other fees and charges; and

(21) to exercise all other powers necessary or convenient to the implementation of the plan and the carrying out of the project.

(g) (1) Each contractor with the commission and each subcontractor shall comply with the applicable requirements of chapter one hundred and forty-nine as to wage and hours of labor and any other conditions relating to employment. The department generally enforcing the requirements of such chapter shall enforce this paragraph and shall also have power to petition the court for injunctive or other appropriate relief against any operating agency which fails to comply herewith.

(2) The provisions of chapter thirty-one and the rules made thereunder shall not apply to any officer or agent of the commission or to any person employed on or in connection with any project of the commission.

(3) The provisions of chapter thirty B and any rules or regulations issued thereunder shall apply to all procurement or disposition activities undertaken by the commission except to real property acquisitions or dispositions made by the commission within the project area.

(4) All ordinances and regulations of the participating cities in which a portion of the project lies relating to the construction of buildings, municipal planning and zoning and the protection of public health shall apply to such portion of the project located in such city, except that, in the event of any conflict between the plan and such ordinances or regulations, including, but not limited to, ordinances governing zoning and other land, the provisions of the plan shall govern and the commission shall, with respect to the affected project area, have the exclusive right to exercise the powers of the permit granting authority and the special permit granting authority pursuant to chapter 40A of the General laws and the planning board pursuant to sections 81K to 81GG, inclusive, of chapter 41 of the General Laws.

(h) (1) The commission shall be liable in contract or in tort in the same manner as a private corporation. The members, employees, officers and agents of the commission shall not be liable as such on its contracts or for torts not committed or directly authorized by them nor shall said members be liable for any negligent or wrongful act or omission for which the commission would be liable under applicable rules of law, in which event any action either civil or criminal against the commission shall be the exclusive remedy for any injured party. The property or funds of the commission shall not be subject to attachment or to levy and sale on execution, but if the commission refuses to pay a judgment entered against it in any court of competent jurisdiction, the superior court, sitting within and for the county in which the commission is situated, may, by writ of mandamus, direct the treasurer of the commission to pay such judgment. The real estate of the commission shall not be subject to liens under chapter two hundred and fifty-four, but the provisions of sections twenty-eight, and twenty-nine of chapter one hundred and forth-nine shall be applicable to any construction work by or on behalf of the commission. Notwithstanding anything to the contrary provided herein, no accepting city shall be responsible for any debt of the commission.

(2) The commission shall have the right to compel the removal and relocation of and shall reimburse the Massachusetts bay transportation authority and every railroad corporation for all reasonable costs and expenses incurred by the said transportation authority or such railroad corporation to relocate such of their respective facilities as are required to be removed as part of the project being undertaken pursuant to this act by the commission and as are necessary for the continuance of the common carrier services performed by said transportation authority or such railroad corporation. "Facilities", as used in this paragraph, shall mean poles, tracks, switches, wires, conduits, cables, signals, and structures and in addition thereto equipment appurtenant to any of the foregoing.

(i) (1) The bonds, notes, and certificates of indebtedness of the commission, in the absence of any express recital to the contrary on the face, thereof, shall constitute negotiable instruments for all purposes. They may be payable from the income of the commission or constitute a general obligation thereof, may be sold at not less than par, at public or private sale, may mature at such time or times, may be secured in such manner, may provide for such rights and remedies upon their default, may contain such other covenants, terms and conditions not inconsistent with law, may be executed by such officers, and may be issued with or without the corporate seal, all as may be authorized either by vote of the commission or by the officer or officers to whom the power to determine any or all the matters set forth in this sentence may be expressly delegated by vote of the commission. The engraved or printed facsimile of the seal of the commission on its bonds, notes or certificates of indebtedness shall have the same validity and effect as if such seal were impressed thereon. Whenever a bond, note or certificate of indebtedness is required to bear the signatures of two or more officers it shall be sufficient if the signature of any one of such officers upon such instrument is a written signature and the remaining signature or signatures are engraved, printed or stamped facsimile signatures; provided, that each officer whose facsimile signature appears on such instrument has, by a writing bearing his written signature and filed in the office of the secretary of the commission, authorized the officer whose written signature appears on such instrument to cause facsimile to be placed thereon. The facsimile signature

of any officer so engraved, printed or stamped thereon shall have the same validity and effect as his written signature. In case any officer whose signature or a facsimile thereof appears on any notes, bonds or coupons shall cease to be such officer before the delivery of such notes or bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such deliver.

(2) The bonds, notes and certificates of indebtedness of the commission issued under this section and the interest thereon shall be exempt from taxation, with respect to principal and income. The bonds of the commission issued under this section shall be legal investments for the deposits and the income derived therefrom of savings banks, for the trust funds of trust companies, for the capital and other funds of insurance companies, and for funds over which the commonwealth has exclusive control.

(3) The proceeds of bonds issued pursuant to this section shall be available to pay the costs of issuance thereof, to reimburse the participating cities for monies advanced to the commission and to pay costs incurred by the commission in connection with the operation of the commission, the implementation of the plan and the carrying out of the project.

(j) (1) The real property and tangible personal property of the commission shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation, betterments and special assessments and other fees and charges.

(2) (i) Subsequent to any portion of the affected project area having been leased by the commission as landlord, or sold by the commission, or having been rehabilitated by any person or entity with funds provided through the commission, such portion shall be exempted from taxation, as if such exemption was set forth in section 5 of chapter 59 of the General laws, and from all betterments and special assessments but shall be subject to an agreement, hereinafter referred to as a pilot agreement, with the commission providing for an annual payment to the commission in lieu of taxes by the owner or lessee of such portion of the affected project area, which pilot agreement shall run with and be binding on the subject of real property.

Such tax exemption shall continue as long as such payments are made pursuant to the pilot agreement. For purposes of this subsection, "real property" shall include buildings and other improvements located thereon and leasehold interests therein; "real estate taxes" shall include betterments and special assessments and the "imposed rate" shall be equal to the simple average of the rates imposed by the participating cities with respect to property used for purposes similar to the property being taxed; provided, however, that the imposed rate and the assessed value shall be calculated as of January 1 prior to the fiscal year for which such calculation is made.

(ii) Monies received during the fiscal year by the commission other than bonds issued by the commission or from federal, state, or private funds designated for the acquisition of real property or for capital improvements to real property or for other specific commission activities shall be paid and applied by the commission in the following order:

(A) first to pay annual operating expenses of the commission, other than payments due on indebtedness of the commission, in accordance with the annual budget of the commission;

(B) then to payment of amounts due and payable on outstanding indebtedness of the commission, if any;

(C) then to the repayment by the commission of any obligation to the commonwealth then due and repayable, if any;

(D) then to each participating city in an amount equal to the difference between: (i) the aggregate taxes due with respect to fiscal year 1999 on real property within such participating city which is designated in the plan to be acquired or rehabilitated; and (ii) the sum of real estate taxes assessed for the fiscal year for which the calculation is made on real property within such participating city and which is designated in the plan to be acquired or rehabilitated but which had not become part of the affected project area as of January first prior to the commencement of the fiscal year for which the calculation is made;

(E) then to each participating city in an amount equal to the product of the then remaining aggregate income and a fraction, the numerator of which is the number of square feet of land area within such participating city which is included in the affected project area and the denominator of which is the total number of square feet of land area included within the affected project area.

(3) The commission shall retain an independent assessing firm to appraise the affected project area once every three years.

(k) No bond, note or other evidence of indebtedness executed or obligation or liability incurred by the commission shall be a debt or charge against any of the participating cities or of the commonwealth or any political subdivision thereof other than the commission. Nothing in this section shall be construed to obligate the commonwealth, or any political subdivision thereof other than the commission, to pledge its credit, to any payment whatsoever to the commission or to any creditor or bondholder thereof, nor shall anything therein contained be construed as granting to the commission any exemption from taxation except as expressly provided therein or to render the commonwealth, or any political subdivision other than such agency liable for any indebtedness or liability incurred, acts done, or any omissions or failures to act, of the commission.

(l) (1) The participating cities may raise and appropriate money for the purpose of defraying the initial costs and annual administrative expense of the commission, including without limitation the expense of preparing any plans, studies, programs and surveys the commission is authorized to prepare, including the expense of the plan for the project.

(2) Without limiting the generality of the foregoing, the participating cities may from time to time appropriate or agree to appropriate money for the purpose of aiding in the preparation of plans and estimates needed to prepare applications for federal loans or grants and in the preparation of any other estimates, plans, orders of taking and contract documents in connection with any proposed or approved project. All moneys appropriated under the preceding sentence shall be repaid by the commission to such cities if the commission subsequently receives other moneys available for the purposes for which such moneys were appropriated, but otherwise such moneys need not be repaid.

(3) All moneys appropriated under this subsection in aid of the commission or received by the commission from any source shall be paid to the treasurer of the commission or to such agent of the commission as the commission may authorize, and shall be disbursed by such treasurer or agent, subject to accounting therefore as required by this section.

(4) Notwithstanding anything in this section provided to the contrary, a participating city shall have the right to elect not to raise or appropriate and make available to the commission any money for the purposes described in this subsection or in subsection (m). In such event, the other participating cities electing to raise, appropriate and make available to the commission money for the purposes set forth in this subsection and said subsection (m) shall be reimbursed for the money so made available, together with interest thereon at the per annum rate of the prime rate as established from time to time by the First National Bank of Boston plus two, from the date of such expenditures by the participating cities from any grant funds received by the commission, such reimbursement to be the first distribution made from any such grants funds received by the commission. The reimbursement provided for in this subsection shall be applicable only to funds raised, appropriated and made available by participating cities after the effective date of this section.

(m) (1) A participating city may raise and appropriate, or may borrow, in aid of the commission, such sums as may be necessary for defraying such city's share of the development, acquisition and operating costs of the project; and for the making of relocation payments by the commission.

(2) Indebtedness authorized under this section shall be outside the limit of indebtedness prescribed in section ten of chapter forty-four of the General Laws, and shall be payable within twenty-five years and otherwise subject to sections sixteen to twenty-seven, inclusive, of said chapter forty-four.

(n) To aid and cooperate in the planning, construction or operation of the project, a participating city may upon such terms, and with or without consideration, do or agree to do any or all of the following things, as such city may determine.

(1) Sell, convey or lease any of its interests in any property, or grant easements, licenses or any other rights or privileges therein to the commission;

(2) Cause water, sewer or drainage facilities, or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed or furnished adjacent to or in connection with the project;

(3) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue, public ways and construct sidewalks, adjacent to or through the project;

(4) Adopt ordinances or by-laws under chapter forty A or repeal or modify such ordinances or by-laws;

- (5) Cause public improvements to be made and services and facilities to be furnished to or for the benefit of the commission and the project area or any portion thereof for which no betterments or special assessments may be levied or charges made;
- (6) Purchase and hold any of the bonds or notes of the commission and exercise all of the rights of a holder of such bonds or notes;
- (7) Make available to the commission the services of its agencies, officers and employees;
- (8) Cause private ways, sidewalks, footpaths, ways for vehicular travel, or water, sewer or drainage facilities and similar improvements to be constructed or furnished within the site of the project for the particular use of the project;
- (9) Enter into agreements with the commission, the term of which agreements may extend over twenty-five years, respecting action to be taken by such city pursuant to any of the powers granted by this section; and
- (10) Do any and all other things necessary or convenient to aid and cooperate in the planning, construction or operation of the project.

The entering of a contract under this section between a city and the commission shall not be subject to any provision of law relating to publication or to advertising for bids.

(o) A participating city, in which the commission proposes to take, acquire or clear land constituting the whole or part of parts of an area which the commission has determined to be a decadent or blighted open area, may enter into an agreement with the commission to bear any loss that may arise as a result of such taking, acquisition or clearance in the event that such land is not used for project purposes.

(p) (1) The project shall not be undertaken until (1) a public hearing relating to the plan for the project has been held after due notice before the city council of each of the participating cities and (2) the plan has been approved by the municipal officers and the department as provided in this section. Notice of such public hearing shall be sent to the Massachusetts historical commission together with a map indicating the project area.

Notwithstanding the provisions of any general or special law to the contrary, due notice shall be deemed to have been given if notice of the time and place of the public hearing relating to the plan is published in a newspaper of general circulation in each of the participating cities at least 14 days prior to the date of the hearing and such notice shall be posted in a conspicuous place in the city hall in each of the participating cities not less than 14 days before the day of the hearing. Notice of the hearing shall be sent by mail, postage prepaid, to the department of housing and community development, the executive office for administration and finance and to the planning board of each participating city.

(2) Whenever the commission determines that the project should be undertaken, it shall apply to the municipal officers of the participating cities for approval of the plan. Such application shall be accompanied by the plan for such project, a statement of the proposed method of financing the project and such other information as the commission deems advisable.

(3) When approved by the municipal officers, the plan shall be submitted to the department together with such other material as the department may require.

(4) The department shall not approve the plan unless it shall have found (a) the project would not by private enterprise alone and without either government subsidy or the exercise of governmental powers be undertaken; (b) the financial plan is sound; (c) the project area is a decadent or blighted open area; (d) the plan is sufficiently complete, as required by section one; and (e) the relocation plan has been approved under chapter seventy-nine A.

(5) Within sixty days after submission of the plan, the department shall give written notice to the commission of its decision with respect to the plan. If the department shall disapprove the plan, it shall state in writing in such notice its reasons for disapproval. The department may hold a public hearing upon request of the commission, the mayor of a participating city, or seventy-five or more taxable inhabitants of such city.

(6) Any provision to the contrary notwithstanding, the commission may without awaiting the approval of the department, proceed by option or otherwise, to obtain control of such property within the project area as is necessary

to carry out the plan; but it shall not, without the approval of the department, unconditionally obligate itself to purchase or otherwise acquire any such property.

(7) When the plan has been approved by the department and notice of such approval has been given to the commission, the commission may proceed at once to acquire real estate within the project area by purchase, taking by eminent domain or gift.

(8) In the event that any participating city shall not accept the plan, the other participating cities which have accepted the plan shall have the right to implement it by vote of the municipal officers of such other participating cities. Upon such affirmative vote, the non-accepting participating city shall be deemed to have withdrawn as a participating city from participation in the commission.

(g) If the commission shall sell or lease any property acquired by it for the project, the terms of such sales or lease shall obligate the purchasers or lessees (i) to devote the land to the use specified in the plan; (ii) to begin the building of their improvements within a reasonable time; (iii) to abide by any activity and use limitation imposed on the property; and (iv) to comply with such other conditions as are deemed necessary to carry out the purposes of this chapter, or requirements of federal legislation or regulations under which loans, grants or contributions have been made or agreed to be made to meet a part of the cost of the project. Nothing in this section shall be construed as limiting the power of the commission in the event of a default by purchaser or lessee of land in the project area to retake title to and possession of the property sold or leased free from the obligations in the conveyance or lease thereof.

(r) (1) The plan may require the payment of a linkage fee as a condition of the approval of the construction, enlargement, expansion, substantial rehabilitation or change of use of non-residential projects within the project area that require relief by the commission from the use, dimensional or other requirements of a nature customarily addressed in a zoning ordinance or by-law or that exceed a threshold established by the commission (a "development impact project"), for any future development within the project area.

(2) Any linkage fee collected by the commission shall be used solely for the purpose of defraying the costs incurred by the commission in connection with the making of capital improvements within the project area, which improvements are required to support development of the project area, including without limitation, improvements to public facilities, roads, sewers, water supply lines, job training facilities, public safety facilities, and parks and other recreational areas (collectively the "project infrastructure").

(3) The plan may impose a linkage fee if the following criteria are met:

(i) The commission shall have prepared a study (the "study") of the project infrastructure required in connection with the development of the project area, which shows a rational nexus between the creation of new office, commercial and industrial structures and the need for new or improved project infrastructure.

(ii) Any linkage fee imposed by the plan shall be set in accordance with the methodology set forth in the study, and shall be established in accordance with the projection of costs associated with required project infrastructure, as set forth in the study.

(iii) The commission shall have the authority to create a distinct and separate revolving trust account for linkage fees collected by the commission. Linkage fees collected by the commission shall be applied solely to reimburse the commission for expenditures for project infrastructure constructed in connection with the implementation of the plan. No linkage fees shall be paid to the commission's general fund.

(iv) The linkage fees schedule shall be reviewed at least every three years and shall be reset as required based upon the recommendation of the commission.

(v) Any funds not expended or encumbered by the end of the calendar quarter immediately following the sixth anniversary of the date of the payment of the linkage fee shall, upon application of the then owner of the land with respect to which the linkage fee was paid, be returned to such owner, provided that such application shall be made no earlier than the fifth anniversary and no later than the sixth anniversary of such payment date.

(4) The plan shall provide that there shall be credited against any linkage exaction fee due with respect to a development impact project any grants received by the commission or the participating city within which such development impact project is located with respect to such development impact project. The level of any exaction shall be reviewed by the commission at least every three years and reset as required.

(s) The commission is hereby authorized to delegate to any public agency qualified and authorized to carry out urban redevelopment activities any of the powers or functions of the commission with respect to the planning or undertaking of the project in the area in which the participating cities are authorized to act, and the public agency to which such delegation is made is hereby authorized to carry out or perform such powers or functions for the commission. Any public body is hereby authorized to enter into agreements which may extend over the period of the bonds issued by the commission notwithstanding any provision or rule of law to the contrary, with any other public body or bodies respecting action to be taken pursuant to any of the powers granted by this section, including the furnishing of funds or other assistance in connection with the plan or project. To the extent it determines it is feasible, the commission shall afford maximum opportunity consistent with the sound needs of the city as a whole for the rehabilitation or redevelopment of decadent or blighted open areas by private enterprise.

(t) The commission shall keep an accurate account of all its activities, receipts and expenditures in connection with the planning and execution of the project and shall annually in the month of January make a report of such activities, receipts and expenditures to the department, the state auditor and the mayors of the participating cities. The department or state auditor shall have the power to examine into the properties and records of the commission and to prescribe methods of accounting, not inconsistent with the federal legislation, for such activities, receipts and expenditures.

(u) The commission shall be dissolved upon the payment in full of all amounts outstanding under bonds issued by the commission pursuant to this section, and upon such payment the treasurer of the commission shall file a certificate of such payment with the secretary of state of the commonwealth, and the legal existence of the commission shall be deemed to have terminated upon the filing of such certificate, subject to the applicable provisions of section fifty-one of chapter one hundred and fifty-five of the General Laws. In connection with the application of said section fifty-one, any real property owned by the commission at the time of the termination of its legal existence shall be deemed to be distributed automatically to and become the property of the participating city in which it is located, and the personal property of the commission shall be equitably allocated to the participating cities.

(v) (1) In conjunction with any planned acquisition as provided in this section, the commission may enter upon any property within the project area, whether publicly or privately owned, after due notice by registered or certified mail, for the purpose of making such surveys, environmental site assessments, test pits, and borings as it finds necessary or convenient to determine the feasibility or desirableness of acquiring such property under the plan or to otherwise carry out the purposes of this section. Such entry shall not be deemed a trespass or an entry under any condemnation proceedings which may be then pending. The commission shall make reimbursement for any actual damage resulting to such property caused by it in the exercise of such right of entry and shall so far as possible restore such property substantially to the same condition as prior to the making of such surveys, environmental site assessment, test pits, and borings.

(2) The commission may take or arrange for necessary response actions, as defined in chapter twenty-one E of the General Laws, as determined by reference to the Massachusetts contingency plan, with respect to any release or threat of release of oil or hazardous materials. The commission shall be entitled to reimbursement from any other person liable for such release or threat of release for the reasonable costs of such response actions, including all litigation costs and attorney's fees. All claims for contribution, reimbursement or equitable share by the commission pursuant to this section and said chapter twenty-one E shall be brought in accordance with the procedures set forth in sections four A and eleven A of said chapter twenty-one e. The commission may enter into agreements with prior owners or operators of a site, or persons who may have otherwise caused or may be legally responsible for releases or threats of release of oil or hazardous material, or any other persons, to conduct or reimburse the commission for the costs of response actions. In conducting any response action pursuant to the requirements of said chapter twenty-one E and the regulations promulgated thereto, the commission shall not be exempt from any compliance assurance or permit fees.

(3) The commission may enter into agreements with its response action contractors to indemnify and hold such contractors harmless against any liability for negligence, including legal fees and costs, if any, in an amount not to exceed a figure established by the indemnification agreement pursuant to the provisions of this subsection and section seventeen of chapter twenty-one E of the General Laws. In no event shall the amount of indemnification to be provided under an indemnification agreement exceed two million dollars for a single occurrence involving the release or threat of release of oil or hazardous material. No indemnification shall be provided pursuant to an indemnification agreement under this subsection if the response action contractor acts in a negligent, willful, or malicious manner or if the action or omission which gives rise to a claim is not within the scope of the response action contract. The indemnification provided under this subsection shall apply only to response action contractor

liability arising out of a release or threat of release of oil or hazardous material resulting from response actions conducted by the response action contractor pursuant to its response action contract.

(w) A permit to construct any building, structure or other improvement on land acquired or rehabilitated by the commission or by any other entity or party with funds made available by or through the commission shall be issued by a building inspector of a participating city only after the applicant for such permit shall have delivered to such building inspector a certificate from the commission stating that such building, structure or other improvement complies with the requirements of the land use regulations established under the plan.

(x) A person aggrieved by a decision of the commission with respect to the application of the land use regulations may appeal such decision in accordance with the provisions of section 17 of chapter 40A of the General Laws. A person shall not be considered to be an aggrieved party hereunder unless such person would have been considered to be an aggrieved party under similar circumstances pursuant to said chapter 40A.

(y) Any documentary materials or data whatsoever made or received by any member, agent or employee of the commission, by any mayor, member of the governing body, agent or employee of any participating municipality and consisting of, or to the extent that such materials or data consist of, trade secrets or commercial or financial information regarding the operation of any business conducted by: (i) an entity which has entered into agreements with the commission for the implementation of the plan for the project; or (ii) an applicant for or recipient of any form of assistance which the commission is empowered to render, or regarding the competitive position of such entity, applicant or recipient in a particular field of endeavor, shall not be deemed to be public records of the agency and, specifically, shall not be subject to the provisions of section 10 of chapter 66 of the General Laws. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the commission or such governing body, as the case may be, in executive sessions closed to the public, notwithstanding the provisions of section 11A> of chapter 30A of the General Laws, but the purpose of such executive session shall be set forth in the official minutes of the commission or governing body, as the case may be, and no business which is not directly related to such purpose shall be transacted nor shall any vote be taken during such executive session.

(z) The commission and the department of environmental protection may enter into a memorandum of agreement with respect to the timing of response actions under chapter 21E of the General Laws.