

**MEMORANDUM OF AGREEMENT**  
**MERRIMACK VALLEY REGIONAL TRANSIT AUTHORITY**  
**AND THE**  
**CITY OF NEWBURYPORT**

This Memorandum of Agreement (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_, 2016, by and between the Merrimack Valley Regional Transit Authority, an authority established and existing under Chapter 161B of the Massachusetts General Laws, having its principal place of business at 85 Railroad Avenue, Haverhill, MA 01835, acting by and through its Administrator (the "MVRTA"); and the City of Newburyport, a Massachusetts municipality having a place of business at 60 Pleasant Street, Newburyport, MA 01950, acting by and through its Mayor (the "City"), the parties hereto.

**WITNESSETH**

**WHEREAS**, the parties acknowledge that there is a substantial need for an intermodal transit and parking facility in the City (the "Parking Facility"); and

**WHEREAS**, development of such intermodal Parking Facility will benefit the City by providing access for its citizens, visitors, commuters and business community to existing and future regional transit services in the City, which may also provide surplus parking to reduce central waterfront parking and accommodate motor vehicle traffic associated with the City's future business and residential development; and

**WHEREAS**, the creation of the Parking Facility will benefit the MVRTA by generating intermodal transit activity and property development within the MVRTA service area, resulting in an increased use of MVRTA services and by fostering good will and strong relations with the City; and

**WHEREAS**, Seven million dollars (\$7M) of Federal Transit Administration (FTA) and Massachusetts Department of Transportation (MassDOT) funds have been earmarked toward construction of the proposed Parking Facility, provided that the City works with the MVRTA as a certified transit provider (the "Federal Funds"); and

**WHEREAS**, the MVRTA is a federally certified transit provider; and

**WHEREAS**, the City's has agreed to cover the balance of funding necessary to design and construct the Parking Facility (the "Gap Funding"), to be supported by revenues from the City's Downtown Parking Program; and

**WHEREAS**, the MVRTA has selected and engaged a design and project management team including, but not limited to, architects, engineers, traffic engineers and other expert consultants (the "Consultants") to complete a 30% design phase for the Parking Facility, with provision for extension of such contract into a 100% design phase upon the City's appropriation of final design funds in the amount of \$630,300; and

**WHEREAS**, the City requires that MVRTA's design and project management team be under direction of the City during the 100% design phase to ensure timely and satisfactory completion of the project, including the submission of all necessary deliverables, permit drawings, final construction drawings and specifications; and

**WHEREAS**, the City will obtain title to a parcel of land or adequate portion thereof, commonly referred to as the “Titcomb Street Site” or “Fitness Factory Site,” located at the southwest corner of the intersection of Merrimac Street and Titcomb Street in downtown Newburyport, as more fully described in Exhibit \_\_ attached hereto (the “Titcomb Street Site”), which Lot has been identified by the parties as an appropriate site for construction of the Parking Facility; and

**WHEREAS**, the parties desire to enter into an agreement to govern acquisition and control of the Titcomb Street Site, procurement of all financing necessary for development of a Parking Facility, completion of the final design and construction of the Parking Facility and to satisfy the foregoing recited needs and benefits associated with the Parking Facility in the City and for MVRTA (the “Agreement”); and

**WHEREAS**, the undersigned representatives of the parties are duly authorized to act on behalf of each party, respectively, and to bind each party to the terms of this Agreement pursuant to the provisions of Massachusetts General Laws (M.G.L.) Chapter 161B, the statute authorizing transportation facilities and urban development plans, and the City of Newburyport Charter;

**NOW, THEREFORE**, in consideration of the promises and mutual benefits to be derived by the parties hereto, the MVRTA and the City hereby agree as follows:

1. The parties acknowledge and agree that the Parking Facility shall consist of a multi-story intermodal transit structured parking garage and other improvements associated therewith, which Parking Facility shall benefit MVRTA users, and provide surplus parking to the general public consistent with provisions related to the use of Federal Funds, in order to benefit commercial and residential users located in downtown Newburyport.
2. MVRTA agrees to work with the City and its designated Consultants to amend existing contract(s) to ensure that there is adequate oversight by the City and consultant obligation to the City during the 100% design phase. The City reserves the right to request reasonable modifications to the design contract based upon the current status of the project, and in light of known time constraints, permitting requirements and deliverables essential to the City. Any amendment(s) to the contract(s) shall be upon terms and conditions satisfactory to the City.
3. MVRTA acknowledges that the City may wish to select and/or hire its own Owner’s Project Manager (OPM) to assist with oversight of the 100% design phase and to provide Construction Administration (CA) services during construction of the Parking Facility. MVRTA agrees to work cooperatively with the City in selecting an OPM satisfactory to both parties and within the allocated budget.
4. The parties acknowledge and agree that final design of the Parking Facility, including but not limited to the exterior design thereof, shall be subject to approval by the City and compliance with applicable requirements of the Newburyport Zoning Ordinance.
5. The City, acting by and through its City Council, shall take any and all actions (including, but not limited to eminent domain) necessary to acquire and subsequently designate the Titcomb Street Site as “surplus” property under applicable laws and regulations, and to take any and all action necessary to allow the eventual long-term (99 year) lease of such site, pursuant to a ground lease or such other

instrument as is mutually agreed to by the parties, to the MVRTA to allow the MVRTA to construct and operate the Parking Facility (the "Transfer Instrument"). In the event all Federal Funds, Non-Federal Funds and City Requirements necessary for the design and construction of the Parking Facility are not obtained by the MVRTA, the City's obligation to lease the Titcomb Street Site to the MVRTA shall be null and void.

6. The terms of the Transfer Instrument shall include, but not be limited to provisions:
  - a. Allowing and requiring the MVRTA to construct the Parking Facility on the Titcomb Street Site, using Federal Funds, State Funds and gap Funding, such Parking Facility to be consistent with the design plans approved by the City, and attached hereto as Exhibit \_\_\_;
  - b. Allowing and requiring the MVRTA to operate and maintain the Parking Facility on the Titcomb Street Site;
  - c. Acknowledging and agreeing that all user fees and rates for the Parking Facility shall be approved, and amended from time to time, only with joint approval by the City and MVRTA;
  - d. Acknowledging and agreeing that any revenues collected in the Parking Facility by MVRTA or its consulting operator, beyond those funds necessary to cover operational expenses and ensure adequate funds for routine upkeep and maintenance of the Parking Facility in accordance with MVRTA and Federal Standards, shall be transferred by MVRTA to the City for its use in repayment of any bonds associated with the Gap Funding;
  - e. Acknowledging and agreeing that Newburyport residents shall have access to park in the Parking Facility during the City's designated snow emergencies.
7. This agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither party shall assign or transfer any interest in the Agreement without the written consent of the owner.
8. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth herein or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.
9. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
10. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its courts for the adjudication of disputes arising out of this Agreement.

11. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

In witness whereof, the parties hereto have executed this Agreement on the day and year first above written.

MVRTA

CITY OF NEWBURYPORT

\_\_\_\_\_  
Administrator

\_\_\_\_\_  
Mayor

Approved as to Form:

\_\_\_\_\_  
City Solicitor

DRAFT