TOWN OF ARLINGTON
MASSACHUSETTS 02476
781 - 316 - 3090

DEPARTMENT OF PLANNING and
COMMUNITY DEVELOPMENT

MEMORANDUM

To: Arlington Town Meeting, Greg Christiana, Moderator

Arlington Redevelopment Board

From: Claire V. Ricker, AICP - Director of Planning and Community Development (DPCD)

Date: October 19, 2023

RE: MBTA Communities Economic Feasibility Analysis

Introduction:

In this memo, DPCD seeks to clarify the process for applying Arlington's existing inclusionary zoning bylaw to a MBTA Communities Overlay District.

Because large affordability requirements can make it economically infeasible to construct new multi-family housing the Executive Office of Housing and Livable Communities (EOHLC) will review affordability requirements for an MBTA communities zone that are greater than 10% of the units in a project or require that units be affordable at less than 80% of Area Median Income (AMI.)

The Town of Arlington's local Inclusionary Zoning Bylaw, which is proposed to apply to our MBTA Communities Overlay, requires that 15% of all rental units developed as part of a project with 6 or more units shall be priced such that rent, including utilities, is no more that 30% of the total income for a household making 60% of AMI. Homeownership units such as condominiums or townhouses shall be priced for sale such that the mortgage, interest, taxes, insurance, and condominium fees total no more than 30% of the annual income of a household making 70% of AMI. This requirement will need to be reviewed by EOHLC.

The Department of Planning and Community Development has contracted with the Metropolitan Area Planning Commission, a third party acceptable to EOHLC, to perform the required economic feasibility analysis. The work is currently underway with the expectation that it will be submitted to EOHLC with the Arlington Town Meeting adopted MBTA Communities overlay bylaw. Please see the end of this document for the executed contract for this work.

Based on the documented history of development in Arlington under our current inclusionary zoning policy, the Department of Planning and Community Development expects that EOHLC will approve our request.

Arlington's Current Inclusionary Zoning Bylaw:

The Town of Arlington's local Inclusionary Zoning Bylaw, which is proposed to apply to our MBTA Communities Overlay, requires that 15% of all rental units developed as part of a project with 6 or more

units shall be priced such that rent, including utilities, is no more that 30% of the total income for a household making 60% of AMI. Homeownership units such as condominiums or townhouses shall be priced for sale such that the mortgage, interest, taxes, insurance, and condominium fees total no more than 30% of the annual income of a household making 70% of AMI.

Arlington has a documented history of building housing under our existing bylaw. Contrast this with other communities which may have Inclusionary Zoning bylaws on the books but have failed to see any new housing built under those bylaws.

Review by the Executive Office of Housing and Livable Communities:

The MBTA Communities Law does not include any requirement for any affordable units in a multi-family housing development that is allowed by right. Because large affordability requirements can make it economically infeasible to construct new multi-family housing the Executive Office of Housing and Livable Communities (EOHLC) has placed a cap on the affordability requirements that can be included without review.

Affordability requirements for an MBTA communities zone that are greater than 10% of the units in a project or that require units be affordable at less than 80% of Area Median Income (AMI) will trigger a review by EOHLC.

In order for the Town of Arlington to apply the local Inclusionary Zoning Bylaw in our MBTA Communities zone, EOHLC may approve "a greater percentage of affordable units, or deeper affordability for some or all of the affordable units" under the following condition:

"The affordability requirements applicable in the multi-family zoning district are supported by an economic feasibility analysis, prepared for a municipality by a qualified and independent third party acceptable to EOHLC, and are using a methodology and format acceptable to EOHLC. The analysis must demonstrate that a reasonable variety of multi-family housing types can be feasibly developed at the proposed affordability levels, taking into account the densities allowed as of right in the district, the dimensional requirements applicable within the district, and the minimum number of parking spaces required."[1]To that end, the Department of Planning and Community Development has contracted with the Metropolitan Area Planning Commission, a third party acceptable to EOHLC, to perform the required economic feasibility analysis. The work is currently underway with the expectation that it will be submitted to EOHLC with the Arlington Town Meeting adopted MBTA Communities overlay bylaw.

Area Median Income:

Area median income is a calculated value by the federal Office of Housing and Urban Development (HUD.) The "area" for Arlington covers a fairly large portion of eastern Massachusetts. AMI values are calculated differently for different sizes of household.

A requirement that a unit be affordable at 80% of Area Median Income would mean that rent, including utilities, can be no more than 30% of a household's income for a

[1] Commonwealth of Massachusetts Executive Office of Housing and Livable Communities, *Compliance Guidelines for Mutli-Family Zoning Districts under Section 3A of the Zoning Act* revised August 17, 2023

household making 80% of the AMI as determined by the federal Office of Housing and Urban Development (HUD.)

CONTRACT FOR PROFESSIONAL SERVICES

BY AND BETWEEN THE

METROPOLITAN AREA PLANNING COUNCIL

AND

TOWN OF ARLINGTON

This Agreement is made and entered into by and between the **METROPOLITAN AREA PLANNING COUNCIL** ["**MAPC**"], a public body politic and corporate established by Chapter 40B, Sections 24 through 29, of the Massachusetts General Laws with its principal office at 60 Temple Place, Boston, Massachusetts, 02111, and the **TOWN OF ARLINGTON** with its principal office at 730 Mass Ave, Arlington, MA 02476.

Witnesseth that the parties have AGREED as follows:

Article I
Description and Scope of the Work

1. **MAPC** will provide professional services to undertake and perform all appropriate tasks to produce the **Arlington Economic Feasibility Analysis** and related work products as described in **MAPC**'s proposal dated **September 12, 2023** [the "Proposal"], attached as Exhibit A and incorporated herein.

Article II
Time of Performance

2. **MAPC** shall commence work immediately upon execution of this Agreement and shall complete performance no later than **December 31, 2023.** Time shall be of the essence in relation to **MAPC's** performance under this Agreement. Reasonable extensions shall be granted at the written request of **MAPC**, provided the justifying circumstances are beyond the reasonable control of **MAPC** and without fault of **MAPC.** In the event of such an extension, all other terms and conditions of this Agreement, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.

Article III
Revisions in the Work to be Performed

3. If during the term of this Agreement, **Arlington** requires revisions or other changes to be made in the scope or character of the work to be performed, **Arlington** will promptly notify **MAPC**. For any changes to the scope of work, **MAPC** shall notify **Arlington** of associated costs in writing. **MAPC** shall make the necessary changes only upon receipt of a written acceptance of the costs and a written request from **Arlington**.

4. **Arlington** will neither unreasonably request revisions nor unreasonably withhold final acceptance of work by **MAPC**. Any revisions or changes requested by **Arlington** will not unreasonably depart from the current understanding of the nature and scope of the work to be performed.

Article IV
Payment for Services

5. **Arlington**'s total payment to **MAPC** under this Agreement shall not exceed **$15,000** unless otherwise authorized in writing pursuant to paragraph three (3). This amount shall include any and all expenses and costs incurred by **MAPC** in performing the work**.**
6. **Arlington** shall make payment to **MAPC** as on the schedule and based on the milestones and deliverables set forth in the Proposal.

Article V
Ownership and Confidentiality of Material, Work Products

7. **MAPC** shall afford **Arlington** unlimited access to any work product, including but not limited to all work papers, data, reports, questionnaires and other material prepared, produced or collected by **MAPC** under this Agreement.
8. **MAPC** reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, and otherwise use, and authorize others to use, the copyright in any work developed under this Agreement, and any rights of copyright acquired with funds provided under this Agreement.
9. **Arlington** and **MAPC** shall have both unlimited rights to any data first produced or delivered under this Agreement.
10. Upon completion of this project or termination for or without cause, **MAPC** shall return any documents, models, tools, plans or items whatsoever belonging to or supplied by **Arlington**.

Article VI
Indemnification

11. The parties agree to individually assume responsibility for any and all claims, losses, or liability arising from any act, omission, or failure of itself, its subrecipients, subcontractors, officers, agents, and employees relating to this Agreement. The parties further agree to hold each other harmless from such claims to the extent permitted by law.

Article VII
Assignment

12. The parties shall not assign nor transfer their respective interests in this Agreement, in part or in whole, without the prior written consent of the other.

Article VIII
Severability

13. In the event any provision of this Agreement is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the Agreement shall remain and continue in full force and effect.

Article IX
Termination of Agreement

14. **Arlington** or **MAPC** may terminate this Agreement upon immediate written notice should the other party fail to perform substantially in accordance with the terms of the Agreement with no fault attributable to the other.

15. In the event of a failure to materially perform by **MAPC**, the notice of such breach shall be accompanied by the nature of the failure, and shall set a date at least 60 days later by which **MAPC** shall cure the failure. If **MAPC** fails to cure within the time as may be required by the notice, **Arlington** may at its option, terminate the Agreement. If the value of this Agreement exceeds $250,000, and **MAPC** fails to cure within the time as may be required by the notice and **Arlington** does not choose to terminate the Agreement, liquidated damages shall be due to **Arlington** in the amount of 0.1% (one-tenth of one percent) of the face value of the Agreement for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **MAPC's** final invoice or taken by **Arlington** as a deduction to such final invoice.

16. Notwithstanding any language to the contrary within this Agreement, **Arlington** or **MAPC** may terminate this Agreement without cause at any time, effective sixty days beyond a termination date stated in a written notice of termination. In the event of termination, **MAPC** shall be compensated for work product and services performed prior to the date of termination. In no event shall **MAPC** be entitled payment for any services performed after the effective date of termination, and under no circumstances shall the total price paid under the contract exceed the amount referenced in paragraph five (5).

Article X
Compliance with Conflict of Interest Laws

17. **MAPC** warrants and represents to **Arlington** that, to the best of its knowledge, no officer or employee of **MAPC** who has participated in the preparation or negotiation of this Agreement, or who will participate in the execution of this Agreement, nor such employee's spouse, parents, children, brothers or sisters, partner, any business organization in which he or she is serving as officer, director, trustee, partner or employee, nor any person with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest in this Agreement, except as permitted under M.G.L. c. 268A, § 6. **MAPC** further warrants and represents to **Arlington** that, to the best of its knowledge, no employee of **MAPC** has a financial interest, either directly or indirectly, in the Agreement except as permitted under M.G.L. c. 268A, §7.

Article XI
Governing Law and Jurisdiction

18. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts. Both parties agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this Agreement.

Article XII
Procurement Services
(Where Applicable)

19. The parties agree that all procurements that are funded with federal funds will be performed in accordance with all known applicable federal procurement and contracting requirements.

Article XIII
Complete Agreement

20. This Agreement, and the Exhibits attached hereto and incorporated herein constitute a total agreement of the parties and supersede all prior agreements and understandings between the parties, and may not be changed unless agreed upon in writing by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date written below.

For the METROPOLITAN AREA PLANNING COUNCIL

X DocuSigned by: Marc Draisen 6D73E3E389D948C... **Date:** 10/8/2023

Name: Marc Draisen

Title: Executive Director

For Town of Arlington

X DocuSigned by: Jim Feeney 1042029607D480... **Date:** 10/10/2023

Name: Jim Feeney

Title: Town Manager

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METROPOLITAN AREA PLANNING COUNCIL
FEDERAL FUNDS
CONTRACT RIDER
(WHERE APPLICABLE)

Recitals

WHEREAS, the Contract to which this Rider is attached is funded, either in whole or in part, by federal funds;

WHEREAS, such federal funds may include Coronavirus State and Local Fiscal Recovery Funds ["SLFRF"] made available through the American Rescue Plan, or funds from other federal sources;

WHEREAS, the use of federal funds requires the parties, including but not limited to, recipients, subrecipients, and contractors, to comply with various applicable statutes and regulations including 2 C.F.R. §§ 200.318- 327;

WHEREAS, 2 C.F.R. § 200.327 requires the inclusion of applicable provisions in certain contracts funded in whole or in part by federal funds.

Witnesseth that the parties have AGREED as follows:

Article I
Introduction

1.1 The following contract provisions, if applicable, are incorporated into the Contract to which this Rider is attached. In the event of any conflict between the Contract and this Rider, the provisions in this Rider shall control.

1.2 If the following contract provisions are rescinded or revised, the parties agree to revise this Rider accordingly and make any other changes necessitated by such revisions.

Article II
Contract Provisions Applicable to All Types of Federally Funded Contracts

2.1 Rights to Inventions Made Under a Contract or Agreement

(a). In the event that this Contract is funded by a federal award meeting the definition of "funding agreement" under 37 C.F.R. § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Right to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

2.2 Debarment and Suspension

(a). This provision applies in the event that a contract or subcontract has a value that exceeds $25,000, or requires the consent of an official of a federal agency, or is a contract for federally required audit services. The subrecipient or contractor certifies that neither the subrecipient, contractor, or subcontractor is a party listed on the government wide exclusions in the System for Award Management ["SAM"], in accordance with the OMB guidelines at 2 C.F.R. § 180 that implements Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

2.3 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

(a). Pursuant to 2 C.F.R. § 200.216, subrecipient or contractor certifies that it or its subcontractors shall not procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i). For the purpose of public safety, security of government facilities, physical security, surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(ii). Telecommunications or video surveillance equipment or services provided by such entities or using such equipment;

(iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b). Subrecipient or contractor shall insert the above clause in all subcontracts and other contractual instruments.

2.4 Clean Air Act and Federal Water Pollution Control Act

(a). Clean Air Act

(i). If the Contract value exceeds $150,000, the subrecipient or contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq.

The subrecipient or contractor agrees to report each violation to the federal awarding agency and understands and agreed that the federal awarding agency will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

The subrecipient or contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance.

(b). Federal Water Pollution Control Act

(i). The subrecipient or contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1241 et seq.

The subrecipient or contractor agrees to report each violation to the federal awarding agency and understands and agrees that the federal awarding agency will, in turn, report each violation as required to assure notifications to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office.

The subrecipient or contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance.

2.5 Byrd Anti-Lobbying Clause and Certification

(a). Byrd Anti-Lobbying Amendment

(i). Subrecipients or contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(b). Required Certification for Awards Exceeding $100,000

(i). If applicable, subrecipients and contractors must sign and submit the following certification to the awarding authority with each bid or offer exceeding $100,000.

Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of their knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or

employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Bidder certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the bidding party understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Article III
Contract Provisions Applicable to Federally Funded Construction Contracts

3.1 Equal Employment Opportunity Clause

(a). During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf

of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contracts and subcontracts by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

3.2 Davis-Bacon Act

(a). If this Contract is a prime construction contract employing laborers or mechanics with a value that exceeds $2000, the Davis-Bacon Act, 40 U.S.C. §§ 3141–3144 and 3146-3148 and its related regulations found at 29 C.F.R. Part 5 apply.

(b). The subrecipient or contractor acknowledges that the decision to award this contract is conditioned upon the subrecipient or contractor's acceptance of the wage determination, and upon continuing compliance with the Davis–Bacon Act (40 U.S.C. §§ 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Pursuant to the Davis-Bacon Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determinations, incorporated into this Contract. Subrecipient or contractor further acknowledges and understands that subrecipient or contractor shall be required to pay wages not less than once a week.

(c). Davis-Bacon Prevailing Wage Certification

Subrecipient or contractor certifies that it and all subcontractors shall provide certified payroll affidavits verifying compliance with G.L. c.149 §§ 26–27H, the federal Davis-Bacon Act, and other related acts.

(d). 29 C.F.R. § 5 (a)(1) – (10) are hereby incorporated by reference into this Contract. All

subcontracts must include the text of 29 C.F.R. §§ 5(a)(1) – (10) in full.

3.3 Compliance with the Copeland "Anti-Kickback" Act

(a). If this Contract is subject to the Davis-Bacon Act, the Copeland "Anti-Kickback" Act also applies.

(b). Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.

(c). Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal program may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(d). Breach. A breach of the Contract clauses above may be grounds for termination of the Contract and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 512.

3.4 Contract Work Hours and Safety Standards Act

(a). If this Contract has a value exceeding $100,000 and involves the employment of mechanics or laborers, the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3702 and 3704, as supplemented by the Department of Labor Regulations 29 C.F.R. Part 5 applies.

(b). If applicable, the Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations 29 CFR Part 5. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(c). Pursuant to 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, the Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 shall apply to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health and safety.

(d). Compliance with the Contract Work Hours and Safety Standards Act

Contracts are required to contain the text of 29 C.F.R. § 5.5(b)(1) – (4) as follows:

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in

addition to the clauses required by §§ 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(e). Further Compliance with the Contract Work Hours and Safety Standards Act

(i) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(ii). Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Article IV
Contract Provisions Applicable to Federally Funded Contracts Involving Procurement

4.1 Procurement of Recovered Materials

(a). If this Contract involves a procurement with a value exceeding $10,000 performed by a state agency or an agency of a political subdivision of a state and its contractors, Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, applies.

(b). Contractor acknowledges and understands that, in performing the work specified under this Contract, Contractor shall be required to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

4.2 Domestic Preferences for Procurements

(a). Pursuant to 2 C.F.R. § 200.322, As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Exhibit A

Arlington Economic Feasibility Analysis

Scope of Work | September 12, 2023

Project Summary

Arlington's current inclusionary zoning policy requires 15% of units in new development be affordable to households earning 70% of area median income. This level of affordability goes beyond the threshold set by the Executive Office of Housing and Livable Communities (EOHLC) in the Section 3A MBTA communities guidelines. As such, an Economic Feasibility Analysis (EFA) is needed for the inclusionary zoning requirements to be applied in Arlington's proposed Section 3A district. The Metropolitan Area Planning Council (MAPC) will partner with Arlington to conduct a financial feasibility analysis to confirm that the town's current inclusionary policy will be economically feasible for development projects in the context of today's housing market and the proposed 3A district. MAPC's feasibility analysis will meet the requirements for an EFA and will include the documentation required to secure EOHLC approval.

This project is supported by $15,000 in CDBG funds from the Town of Arlington.

Partners + Responsibilities

MAPC will work on the Economic Feasibility Analysis with the Arlington Department of Planning and Community Development (DPCD) through Department Director Claire Ricker. DPCD staff will be responsible for providing local quantitative and qualitative data as described in the scope of work below. DPCD staff will also be responsible for ensuring that relevant boards, committees, and town staff are aware that the analysis is being undertaken and will provide updates to these entities as needed. This project does not include any engagement with local officials, town meeting members, or the broader public; any such engagement, should it be needed, is the responsibility of DPCD.

Scope of Work

TASK 1: REGULATORY CONTEXT

MAPC staff will review Arlington's proposed 3A district zoning to ensure that the feasibility analysis considers housing typologies likely to be developed in the proposed district. MAPC will review Arlington's current inclusionary bylaw to understand the parameters of the policy as it applies to developments of various sizes and tenures and will identify any components of the existing inclusionary bylaw that may conflict with the requirement that development in 3A districts be by-right.

Timeline: October 2023
Task Estimate: $900

TASK 2: MARKET CONTEXT

Subtask 2.1 Quantitative Data

To gain a thorough understanding of Arlington's local housing market conditions and trends, MAPC will gather and synthesize the latest quantitative housing market data using industry sources (e.g., CoStar, MAPC rental database, Warren Group, Zillow, MAPC housing submarkets analysis). The analysis will also rely on permitting and development data to gain insight into recent local development trends.

Subtask 2.2 Review of Recent Development

MAPC will review recent development in Arlington to gain a more thorough understanding of local housing market conditions, challenges to development in town, market sensitivity to variables, benchmarks for lenders and investors, and development assumptions. This may include:

- Profitability documentation and/or development pro formas for recent projects developed under Chapter 40B
- Assessor's database and/or interview with town assessor
- Recent permitting data and/or examples of recent development permitted under Arlington's inclusionary policy, including methods of satisfying inclusionary requirements (e.g. on-site units, off-site units, or in-lieu fee) and in-lieu fee calculations if applicable
- If needed, individual interviews with local real estate professionals including developers (of both market-rate and Affordable Housing), realtors, property management agencies, and/or lenders. Alternatively, MAPC may rely on recent interviews conducted with developers in similar markets.

DPCD will provide local data and make connections as needed.

Subtask 2.3 Define Assumptions

Based on the previous subtasks and input from the project partner, MAPC will define development assumptions. Assumptions will include housing typologies, construction and development costs, project and unit characteristics, financing requirements, and operating costs and revenue. These assumptions will be used as inputs in the financial feasibility model.

Timeline: October 2023
Task Estimate: $4,800

TASK 3: FEASIBILITY ANALYSIS

MAPC will tailor its financial pro forma to align with Arlington's local inclusionary policy methodologies (e.g. affordability or in-lieu fee calculations specific to the municipality). Using the inputs defined in the previous task, MAPC will balance the pro forma to reflect Arlington's local market conditions.

MAPC will analyze Arlington's current inclusionary policy to determine whether it risks posing a barrier to by-right development in the proposed 3A district. The pro forma analysis will include:

- Local development assumptions
- Range of development characteristics required for an EFA, including different project sizes, housing typologies, parking requirements, and tenure
- Analysis of scenarios based on the proposed 3A zoning as well as typologies reflective of townwide trends

- Determination of feasibility of current inclusionary policy in current housing market

The results of this analysis will be documented as part of the EFA.

Timeline: October 2023
Task Estimate: $4,200

TASK 4: SECTION 3A COMPLIANCE DOCUMENTATION

Subtask 4.1 Narrative
MAPC will draft the EFA narrative. As required by EOHLC, the narrative will provide a concise overview of recent housing market trends in Arlington including housing rents, home sales prices, and land sales prices sufficient to support a professional conclusion that the market in the 3A district supports economically feasible production of a reasonable variety of multi-family housing types at the proposed affordability levels contained in the bylaw.

Subtask 4.2 Technical Documentation
MAPC will provide supporting technical materials required as part of the EFA. This includes (1) a completed Assumptions Checklist using the template provided by EOHLC and (2) financial feasibility documentation taking the form of an Excel-based development proforma using locally relevant and locally sourced data to assess how an inclusionary zoning policy impacts the financial feasibility of future development projects.

Timeline: October - November 2023
Deliverable: Economic Feasibility Analysis
Task Estimate: $3,600

TASK 5: PROJECT MANAGEMENT

The project manager will be responsible for monitoring progress towards the execution of this scope, monitoring the budget, ensuring completion of deliverables consistent with project schedule, managing the project team, coordinating internal and external meetings, and maintaining communication with the project partner. This task includes biweekly calls with DPCD staff as needed.

Task Estimate: $1,500

TOTAL PROJECT FEE $15,000

Project Timeline

Work will begin in October 2023. MAPC will do everything in its power to complete the EFA before Arlington's Section 3A zoning is considered at Town Meeting in late October 2023, however, full completion by that time cannot be guaranteed. In the event that the full EFA documentation is not complete by this time, MAPC will provide an abridged summary of the

analysis to inform Town Meeting decisions and will complete the full 3A compliance documentation in November.

	Sep. 2023	Oct. 2023	Nov. 2023	Dec. 2023
Task 1 – Regulatory Context				
Task 2 – Market Context				
Task 3 – Feasibility Analysis				
Task 4 – 3A Compliance				
Fall 2023 Town Meeting				

MAPC will invoice Arlington for services performed upon completion of the EFA and associated deliverables.

Project Connection to MetroCommon

The inclusionary zoning update process will work towards advancing several "Homes for All" goals documented in MAPC's long-range plan, MetroCommon 2050, including but not limited to:

- Available housing meets the needs of residents throughout their lifetime as they form families, age, and experience unforeseen circumstances.
- New and existing housing, including deed-restricted units and naturally occurring affordable housing, are available at a range of prices that correspond to residents' income levels.
- Neighborhoods more closely reflect the racial and income diversity of the region; residents can choose their community based on preference and opportunity, without being limited by historic segregation patterns throughout the region.

Scope Approval

Jim Feeney, Town Manager, Town of Arlington Date

Marc Draisen, Executive Director, Metropolitan Area Planning Council Date