



MASSDEVELOPMENT
UTILITIES DEPARTMENT
33 Andrews Parkway
Devens, MA 01434

CURRENT TERMS AND CONDITIONS FOR UTILITY SERVICES
Revised 5/23/2016

The following Terms and Conditions are a part of all rates, and compliance by the Customer is a condition precedent to the initial and continuing supply of utility services (electricity, natural gas, sewerage, water) at Devens by Massachusetts Development Finance Agency (“MassDevelopment”, “The Agency”, or “MDFA”), a body politic and corporate and a public instrumentality of the Commonwealth of Massachusetts, created and existing under the provisions of Mass. St. 1998, c. 289, Sections 23-29,33.

It is the intention of MDFA that the provisions of this Agreement apply with equal force to all Permanent Utility Services supplied to the customer’s premises. To the extent possible, this Agreement shall be reasonably interpreted to fulfill that intent.

General

1. The Schedule of Rates for electricity, gas, water, and sewer may be revised, amended supplemented or supplanted in whole or in part from time to time by the Agency Board of Directors. When effective, all such revisions, amendments, supplements or replacements will appropriately supersede the existing Schedule of Rates. In cases of conflict between the Terms and Conditions and the Utility Sales Agreement, the Utility Sales Agreement shall apply.
2. The provisions of these Terms and Conditions apply to all persons, partnerships, corporations or others (hereinafter “Customers” or the “Customer”) who obtain service from the MDFA under the Schedule of Rates, except as these Terms and Conditions are explicitly modified in writing by a special contract.
3. Except as may otherwise be provided in a specific rate, if the Customer takes service under a rate that contains a charge based upon a rate of taking service stated in kilowatts, the Customer is expected to maintain a power factor of not less than 90 percent lagging or leading. MDFA may require the Customer, if it fails to satisfy this power factor requirement, to furnish, install and maintain, at no cost to MDFA, such corrective equipment as MDFA may reasonably deem necessary in the circumstances. If the Customer fails to install such corrective equipment within a reasonable period of time under the circumstances, MDFA may elect, upon at least thirty (30) days prior written notice from MDFA to the Customer, to do so at the expense of the Customer provided that the Customer has not so installed such equipment during such notice period. In

addition, MDFA may charge for capacity demand based on 90 percent kilovolt-amperes when the Customer fails to meet the power factor requirement.

4. If the Customer ceases to use utility service for a continuous period of 12 months or more and thereafter requests provision of such service, or requests that additional utility service be provided, MDFA's obligation to supply same is contingent upon MDFA's ability to supply such service without jeopardizing the service to others on the system.
5. The supply of utility service is contingent upon MDFA's ability to secure and retain the necessary location for its pipes, gas equipment, poles, wires, conduit, cable and other apparatus. The character of service to be made available at each location will be determined by MDFA. In general, the standard voltage to be supplied will be 120/240 volts, single phase and 120/208 or 277/480 volts, three phase. The standard pressure for the supply of natural gas shall be 6 inch water column. Contact MDFA for information on availability of other voltages and service characteristics.
6. Such piping, wiring, gas equipment, electrical equipment and apparatus as may be necessary in order to utilize the service shall be provided, installed, maintained, and used by the Customer in accordance with the requirements, if any, of the National Electrical Safety Code, or the American Gas Association and of all public authorities having jurisdiction of the same, and the requirements of MDFA. In general, MDFA will not provide any service until the customer's wiring and piping have been inspected and approved by MDFA and appropriate Devens Enterprise Commission (DEC) inspectors (Building, Electric, Plumbing & Gas).
7. All rates in the Schedule of Rates are predicated on service to a customer at a single delivery or receiving point and metering installation, except as otherwise specifically provided by a given rate. Where service is supplied to an account of the Customer at more than one delivery point or metering installation, each single point of delivery or metering installation shall be considered to be a separate account for purposes of applying the Schedule of Rates, except when the Customer is served through multiple points of delivery or metering installations for MDFA's own convenience.
8. Service cannot be supplied unless and until the customer completes a "Utilities Sales Agreement" with MDFA.
9. No agent or employee of the MDFA is authorized to orally modify any term, provision or rate of MDFA.
10. The Customer shall be liable for service taken until the Customer requests termination of service and a final meter reading is recorded. In the event that the Customer fails to make such request or give notice of termination of service to MDFA, the Customer shall continue to be liable for service taken until either MDFA disconnects the meter or a new party gives notice to MDFA that it is becoming the Customer and will be responsible for service at such service location.

11. At locations where more than one meter is installed at the request of the Customer, the consumption may be billed separately for each meter.
12. The utility services supplied by MDFA for use on the Customer's Premises are for the exclusive use of the Customer. The Customer shall not be allowed to resell to third parties such utility services supplied to the Customer by MDFA. The foregoing shall not prohibit Customer from passing through to, and obtaining reimbursement from, its tenants, licensees, and other occupants of the Premises, the direct cost (without mark-up) of any such utility services consumed by such tenants licensees and occupants on the Premises.

Requirements of Providing Service

13. The Customer shall pipe, wire, or provide other equipment to the point designated by MDFA, at which point MDFA will connect its service.
14. All meters, services, and other utility equipment owned by MDFA regardless of location shall be and will remain the property of MDFA and no one other than an employee or authorized agent of MDFA shall be permitted to remove, operate, or maintain such property. The Customer shall not interfere with, or alter the meters, seals or other property used in connection with the rendering of service. The Customer shall be responsible for all damage to or loss of such property on the Customer's Premises unless occasioned by circumstances beyond the Customers control. Such property shall be installed at points most convenient for MDFA's access and service and in conformance with public regulations of general applicability in force from time to time. The costs of relocating such property shall be borne by the Customer when done at the Customer's request, or for the Customer's convenience, or if necessary to remedy any violation of public law or regulation of general applicability to the extent such violation was caused by the Customer or its employees, agents, contractors or invitees.
15. If MDFA is obligated to construct distribution facilities for the provision of utility services to the Customer, MDFA shall construct or install overhead or underground distribution facilities or other equipment determined by MDFA to be appropriate for the Customer under the following conditions:
 - A. The Customer shall grant MDFA, without cost, such rights and easements as may reasonably be necessary, including rights of ingress and egress, free and clear of encumbrances of record, the form and content of which shall be acceptable to MDFA and the Customer. Such rights and easements must be granted to and accepted by MDFA prior to the start of construction.
 - B. When the Customer requests an overhead electric service extension, MDFA shall install, own, and maintain the service to the point of attachment on the Customer's structure in accordance with MDFA's specifications.

- C. MDFA shall own and maintain all underground primary electric service, which includes all underground service to the low voltage side of the transformer. When a Customer requests an underground primary electric service extension, the Customer shall be responsible for the arrangements and expenses.
16. MDFA shall not be responsible nor will it install a service or meter for a garage, barn or other outbuilding if the location may be supplied with utility service from that of the main building.
17. MDFA may in the exercise of reasonable judgment require the Customer to install at its expense regulating and protective equipment reasonably necessary to comply with MDFA's requirements and specifications of general applicability with respect to any service to loads of unusual characteristics that might, in MDFA's reasonable judgment, adversely affect the quality of service supplied to other customers, the public safety or the safety of MDFA personnel.
18. The Customer shall furnish and install upon its premises such service conductors, service equipment, including oil circuit breaker if used, and meter - mounting device to conform to specifications issued from time to time by MDFA. The MDFA may seal such service equipment and meter-mounting device, and adjust, set and seal such oil circuit breaker, such seals shall not be broken, and such adjustments or settings shall not be changed, or in any way interfered with by the customer.
19. The Customer's wiring, piping, apparatus and equipment for utility services covered by this Agreement shall, at all times, conform to the requirements of general applicability all legally constituted authorities and to those of MDFA, and the customer shall keep such wiring, piping, apparatus and equipment in proper repair.
20. If necessary, MDFA shall make, or cause to be made, application for any necessary street permits, and shall not be required to supply service until a reasonable time after such permits are granted. The customer shall obtain or cause to be obtained all permits or certificates, except street permits, necessary to give MDFA or its agent's access to the Customers equipment and to enable its conductors to be connected therewith.
21. The Customer shall furnish and maintain, at no cost to MDFA, the necessary space, housing, fencing, and foundations for all equipment that is installed on the Customer's Premises in order to supply the Customer with electricity, whether the Customer or MDFA furnishes such equipment. Such space, housing, fencing, and foundations shall be in conformity with MDFA's specifications and subject to its approval, such approval not to be unreasonably withheld or delayed.
22. Sewer customers shall adhere to the Devens Sewer Use Rules & Regulations, including the Industrial Pretreatment Program and water customers shall adhere to the Devens Cross Connection Control Rules and Devens Water Use Rules and Regulations, all approved by the Agency Board of Directors.

Protection of MDFA Property

23. MDFA, upon at least 24 hours prior notice to the Customer (except in an emergency when such prior notice shall not be required), shall have the right of access at all reasonable times to portions of the Premises on which MDFA's meters and other appliances and equipment are located for the purpose of examining, repairing, maintaining or removing the same.
24. All Customers' apparatus shall be suitable for operation with the service supplied by MDFA. The Customer shall not use the service supplied for any purpose, or with any apparatus, that would cause a disturbance to any part of MDFA's system sufficient to impair the service rendered by MDFA to its other customers.
25. The Customer shall not injure, interfere, destroy or tamper with the meter or other property of MDFA nor suffer or permit any person to do so. The Customer shall not permit access to third parties to property owned by MDFA on the Premises for any purpose whatsoever, except by authorized employees or agents of MDFA or with the consent of MDFA, to the meters or other appliances or equipment of MDFA located on the Customer's Premises, and shall provide for their safekeeping. The Customer shall use all reasonable precautions to protect the property of MDFA located on the Premises of the Customer from damage and interference and shall be responsible for all damages to, or loss of, such property of MDFA on such Premises except to the extent caused by MDFA or its employees, agents or contractors.
26. The Customer shall maintain and operate its electric, gas, process water, and wastewater pretreatment equipment and apparatus so as not to endanger or interfere with the service of MDFA. All connections to the MDFA system shall be reviewed and approved by the MDFA, such approval not to be unreasonably withheld or delayed. No one but authorized MDFA personnel shall cut and open MDFA padlock seal on an MDFA-owned meter on the Premises, remove or install such a meter, install jumper pieces or other bypassing devices affecting any such meter, remove or install sleeves, change the meter registration, or tamper in any way with any such meter. Such meters damaged accidentally or otherwise by anyone other than MDFA, or its employees, agents or contractors will be replaced at the expense of the Customer. When such a meter is found to be tampered with, service to that meter may be disconnected. In addition to charges for electricity and gas used, but not metered because of the tampering, all costs attributable to investigation of the tampering, calculation of amounts owed and any other administrative costs will be charged to the Customer. All instances of meter tampering will be reported to proper legal authorities for investigation and prosecution. To restore service after it has been disconnected, application must be made in person at MDFA's offices. Service will be reconnected within 24 hours, if the matter has been resolved to the reasonable satisfaction of MDFA.
27. Whenever MDFA reasonably determines there was unauthorized use of electricity, gas, or water by the Customer, MDFA may make such changes in its meters, appliances, or other equipment on said Premises or take such other corrective action as may be

appropriate to ensure the safety and security of the general public, the equipment and its installation under the circumstances. MDFA shall have the right, when such an unauthorized use of utility has occurred, to assess reasonable estimated service charges as well as all costs incurred in correcting the condition. MDFA may require full payment of all charges and costs prior to restoring service. Nothing in this paragraph shall be deemed to constitute a waiver of any other rights of redress which may be available to MDFA or to limit any legal recourse which may be open to MDFA, including M.G.L. c.164, §§127 and 127A.

28. The Customer shall notify MDFA in writing and obtain MDFA approval (such approval not to be unreasonably withheld or delayed) before making any significant change in the Customer's equipment which would materially adversely affect the capacity or other characteristics of MDFA's facilities required to serve the Customer. The Customer shall be liable for any damage to MDFA's property caused by such additional or changed installation by the Customer if made without prior notification to and approval by MDFA (such approval not to be unreasonably withheld or delayed).

Payment of Bills - Remedies, Security

29. All bills shall be due and payable upon receipt. Accounts shall be considered delinquent, and subject to late fees, if payment is not received within forty five (45) days of invoice date.
30. When a bill rendered is not paid within 45 days after the date of the invoice, interest at the rate of 1-1/2 % per month will be charged on the unpaid balance, including any outstanding interest charges, from the date of invoice until the date of payment.
31. MDFA shall have the right to discontinue its service on due notice and to remove its property from the Premises for just cause or as otherwise provided in the Utility Sales Agreement. After such discontinuance, a reconnection fee and security deposit may be required of the Customer by MDFA for restoration of service
32. MDFA may require a deposit of cash or other collateral satisfactory to it as security for : (a) any new Customer; (b) any present Customer requesting service at a new location if service to the Customer, under the same or any other name, was lawfully terminated for non-payment during the preceding 18 months; or (c) from any present non-residential customer. The deposit required will not exceed the equivalent of three month's average use plus appropriate connection and meter costs.
33. MDFA will credit to the Customer's account, once each year, interest on all cash deposits held for more than six months at a rate equal to the average rate paid on 2-year Treasury notes during the preceding calendar year.
34. A Fifty Dollar fee shall be charged to the Customer for each check presented to MDFA for which there are insufficient funds to honor the check. This fee shall be applicable only where the check has been dishonored after being deposited for a second time.

Measurement of Consumption - Billing Period

35. Meters of either the indoor or outdoor type shall be installed by MDFA at locations to be designated by MDFA after consultation with the Customer. MDFA may at any time replace any meter installed by it upon reasonable prior notice to the Customer. MDFA may also change the location of any meter after consultation with the Customer or change from an indoor type to an outdoor type, provided that the cost of the change shall be borne by MDFA. If more than one meter is installed, except for the convenience of MDFA, the Base Charge for service delivered through each meter shall be computed separately under the applicable rate.
36. Whenever reference is made to “month” in connection with electricity and gas delivered, service furnished, or payments to be made, it shall mean the period between two successive regular monthly meter readings, the second of which occurs in the month to which reference is made. Whenever, reference is made to “quarter” in connection with water delivered or sewer service, or payments to be made, it shall mean the period between two successive regular quarterly meter readings, the second of which occurs in the quarter to which reference is made.
37. The electric demand is the maximum rate of taking electricity. Under ordinary load conditions, it will be based upon one or more fifteen-minute peaks as herein defined. A fifteen-minute peak is the average rate of delivery of electricity during any fifteen-minute period as determined by any suitable instrument. In the case of extremely fluctuating loads, however, where the demand based on the average over fifteen minutes does not fairly represent the maximum demand imposed by the Customer, the demand will be based upon the instantaneous peak or the peak for a shorter period than fifteen minutes. If the fluctuating load causes a deterioration of MDFA’s service to its other Customers, the MDFA shall specify a service arrangement that avoids the deterioration and the Customer owning or operating the equipment that causes the fluctuation shall pay the cost to implement the new service arrangement together with applicable taxes.
38. Off-peak rates shall apply to each of the following days and hours: From 9:00 p.m. to 8 a.m. local time Monday through Friday; all day Saturday and Sunday; and all day on New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day and Christmas Day.

Auxiliary and Temporary Service

39. Service supplied by MDFA shall not be used to supplement or relay, or as a standby to any other service, unless the Customer shall make such guarantees in respect to the payment for such service as shall be just and reasonable in each case. Service cannot be resold. Where such service is supplied, the Customer shall not operate its plant in parallel with MDFA’s system without the consent of MDFA, and then only under such conditions as MDFA may specify from time to time.

40. Temporary service is service which will not continue for a sufficient period to yield MDFA adequate revenue at its regular rates to justify the expenditures necessary to provide such service. MDFA may require a Customer requesting temporary service to pay the full amount of the estimated cost of installing and removing the requested connection, in advance of the installation of the connection by MDFA. In addition, the Customer will be required to make payments for such temporary service at the regular rates.
41. Whenever MDFA reasonably believes the integrity of their utility system may be threatened by conditions on its system or on a part or parts of any system with which MDFA is interconnected, MDFA, in its sole judgment, may curtail, interrupt, or modify service to the Customer and such curtailment, interruption, or modification shall not constitute default by MDFA. MDFA shall not be responsible for any failure to supply service nor interruption or abnormal voltage or pressures, or any damage resulting from the restoration of service, if such failure, interruption, abnormal voltage or pressure, or damage is without willful default or gross negligence on its part. MDFA may, from time to time, test all or portions of its utility systems in accordance with good utility practice. These tests may include, but are not limited to, equipment operation performance, momentary service interruptions and voltage or pressure reductions.
42. MDFA shall make every reasonable effort to maintain uninterrupted service for all customers, but it shall not be liable for loss or damage caused by reason of any interruption or reduction of the supply, or by reason of any abnormal voltage, pressure, or quality, whether as a result of accident, labor difficulties, condition of fuel supply, the actions of any public authority, failure to receive any electricity or gas for which in any manner it has contracted, the implementation in accordance with good utility practice of an emergency load reduction program by MDFA or one with whom it has contracted for a supply of gas or electricity, or inability for any other reason beyond MDFA's control to maintain normal voltage, pressure or quality, or uninterrupted and continuous service.
43. MDFA shall be excused from performing under the Schedule of Rates and shall not be liable in damages or otherwise if and to the extent that it shall be unable to do so or prevented from doing so by statute or regulation or by action of any court or public authority having or purporting to have jurisdiction in the premises; or by loss, diminution, or impairment of electrical service from its generating plants or suppliers or the systems of others with which it is interconnected; or by break or fault in its transmission or distribution system; failure or improper operation of transformers, switches, valves or other equipment necessary for electric or gas distribution; or by reason of storm, flood, fire, earthquake, explosion, civil disturbance, labor dispute, act of God, or public enemy, failure of any supplier to intervening cause, whether or not similar thereto; MDFA shall use reasonable efforts under the circumstances to overcome such cause and to resume full service.
44. MDFA shall not be liable for damage to the person or property of the Customer or any other persons resulting from the use of electricity, gas, or water or the presence of MDFA's appliances and equipment on the Customer's Premises. In any event, for non-

residential customers served under general service rates, MDFA shall not be liable in contract, in tort (including negligence under GL c. 258 and Mass GL c. 93A) , strict liability or otherwise for any special, indirect, or consequential damages whatsoever including, but not limited to, loss of profits or revenue, loss of use of equipment, overtime, business interruption, spoilage of goods, claims of customers of the Customer or other economic harm.

45. Neither by inspection nor non-rejection nor in any other way does MDFA give any warranty, expressed or implied as to the adequacy, safety or other characteristics of any equipment, wiring or devices, installed on the Customer's premises. MDFA shall not be liable for damages resulting in any way from the supplying or use of electricity, gas, or water or from the presence or operation of the MDFA's service, conductors, appurtenances or other equipment on the Customer's premises.
46. The Customer assumes full responsibility for the proper use of electricity, gas, and water furnished by MDFA and for the condition, suitability, and safety of any and all pipes, valves, wires, cable, devices, or appurtenances energized by electricity or through which gas, water, or wastewater flows on the Customer's Premises, or owned or controlled by the Customer that are not MDFA's property. The Customer shall indemnify and save harmless MDFA from and against any and all claims, expenses, legal fees, losses, suits, awards, or judgments for injuries to or deaths of persons or damage of any kind, whether to property or otherwise, arising directly or indirectly by reason of (1) the routine presence in or use of electricity, gas, or water over or through the wires, pipes, cables, devices or appurtenances owned or controlled by the Customer; or (2) the failure of the Customer to perform any of his or her duties and obligations as set forth in the Terms and Conditions where such failure creates safety hazards; or (3) the Customer's improper use of electricity, gas, or water or pipes, electric wires, gas appliances, cables, devices, or appurtenances.