



City of New Bedford
IN COMMITTEE

June 28, 2018

The Honorable City Council
133 William Street
New Bedford, MA 02740

Dear Honorable Members of the City Council:

The Committee on City Property at a Meeting held on Tuesday, June 19, 2018, considered a City of New Bedford's Request for Proposals for the Purchase of Real Property, (Ref'd 2/8/18) (3/26/18-tabled) (5/14/18-rft and rpf)

On motion by Councillor Lopes and seconded by Councillor Abreu, the Committee VOTED: To recommend to the City Council to take "No Further Action" on a City of New Bedford's Request for Proposals for the Purchase of Real Property. This motion passed on a voice vote.

IN COMMITTEE ON CITY PROPERTY

Councillor Naomi R. A. Carney, Chairperson

NRAC: dmb

CITY OF NEW BEDFORD

Bid # 18192319



Request for Proposals for the Purchase of Real Property

Jonathan F. Mitchell
Mayor

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Procurement Calendar

<u>Event</u>	<u>Date</u>	<u>Time</u>
RFP Released	<u>June 28</u> , 2017	N/A
Written Inquiries due	<u>July 14</u> , 2017	1 pm
Proposals due	<u>July 28</u> , 2017	2 pm

INTRODUCTION

The City of New Bedford, hereinafter referred to as the "City" for the purpose of this Request for Proposal (RFP), seeks to purchase a parcel of land, with or without buildings thereon, within the City limits, for the purpose of building a public safety facility. The City has determined that this purchase is subject to Massachusetts General Law, Chapter 30B, and has issued this RFP for soliciting proposals from property owners.

Notice of this RFP is published in the Central Register, which is a weekly publication of the Office of the Secretary of State, and in the Standard Times, which is a newspaper with a circulation sufficient to inform the people of the affected locality. Additionally, the advertisement is posted on the City's website on Wednesday June 28th, 2017 at 8:00 A.M.

Documents must be obtained electronically by emailing purchasing@newbedford-ma.gov on or after June 28th, 2017, (Monday thru Friday – 8:00 AM – 4:00 PM) documents only available electronically.

The New Bedford City Council must authorize the purchase of the real property selected under this RFP and appropriate funds therefore. Any purchase and sales agreement entered into pursuant to this RFP will be subject to City Council's authorization of the purchase and appropriation of the purchase money funds.

The successful property owner must be prepared to enter into a purchase and sale agreement within forty-five (45) days from the selection of the successful proposer substantially in the form of the Purchase and Sale Agreement attached hereto as Exhibit A and incorporated herein. The closing will occur within one hundred twenty (120) days of the appropriation of funds at a City Council meeting subsequent to the bid award.

INSTRUCTIONS TO PROPOSERS

Failure to submit required forms may result in the rejection of the proposal. City reserves the right to waive, and may waive, any informality in the proposal or any details contained therein that do not exactly comply with the terms of this RFP.

- All proposals must be signed by the owner of the property, enclosed in an envelope that is sealed and plainly marked on the outside "City of New Bedford Purchase of Real Property"
- A proposal must be signed as follows:
 1. If the proposer is an individual, by him/her personally, or
 2. If the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner, or
 3. If the proposer is a corporation, by the president/vice-president and the treasurer/assistant treasurer or any other authorized officer, whose signature must be attested to by the clerk/secretary of the corporation and the corporate seal affixed (see Attachment E).
 4. If an LLC, by the managing partner authorized to transact in real property.

- A proposal must include the following attachments:
 1. Information Form (Attachment A) properly completed and executed.
 2. Price Proposal Form (Attachment B) properly completed and executed.
 3. Non-Collusion and Tax Compliance Form (Attachment C) properly completed and executed.
 4. Disclosure of Beneficial Interest Form (Attachment D) properly completed and executed.
 5. Certificate of Vote Form (Attachment E) properly completed and executed, (for corporate owned property only).
 6. LLC Certificate of Authority (Attachment F) (if an LLC is property owner)
- Questions concerning this RFP must be submitted, electronically to richard.calderon@newbedford-ma.gov by 1:00 P.M. July 14, 2017 to:

City of New Bedford Purchasing Department
 Attn: Richard Calderon
 133 William Street, Rm .208
 New Bedford, MA 02740

- The City of New Bedford may cancel this RFP, or reject in whole or in part any and all proposals, if the City determines that cancellation or rejection is in the best interest of the City, and it may select the proposal that it deems to be in the best interest of the City, notwithstanding that it may not be the lowest priced proposal, all in accordance with Chapter 30B.
- All terms of the proposals submitted in response to this RFP, including the price stated therein, must remain firm for one year (365 days) following the proposal opening.
- If on the date and time of the submittal deadline City Hall is closed due to an event such as fire, snow, ice, wind or building evacuation, the submittal deadline will be postponed until 1:00 p.m. on the next business day.

SPECIFICATIONS OF DESIRED PROPERTY

The City will consider the suitability of the proposed property, including but not limited to, factors relating to size of the property; site access for vehicles and pedestrians; availability of parking; environmental conditions, wetlands, grading, drainage, soil conditions, and other conditions of the property; security of the surrounding area; availability and proximity to, and adequacy of, public utilities; compatibility with existing land uses on surrounding parcels;

characteristics of any building(s) and other improvements on the property, and whether it/they would have to be demolished or would be used; cost of development for the intended use; and such other characteristics as it deems advisable depending on the particular property being addressed.

At a minimum, the property must satisfy the following criteria:

- The property must be located within City limits, south of Rivet Street;
- The property must be at least 40,000 square feet in size;
- The property must have adequate access of 100 feet or more from frontage abutting a public way, duly laid out or accepted as such by the City or other government entity, or include valid easement rights over private ways, no less than 50 feet wide, leading to a public way;
- The proposal must include a copy of the latest deed for the property and a site plan or survey of the property, if available;
- The property must have access to town water at the property's boundary, or demonstrate how hookup to town water will be accomplished;
- The property must have access to town sewer at the property's boundary.
- The property must have the ability for Three Phase Electrical Power at the site, or demonstrate how hookup to Three Phase Electrical Power will be accomplished;
- The property must have access to telephone and cable utilities of commercial grade, or describe how hookup to such utilities will be accomplished;
- The property must comply with the City of New Bedford's ordinances;
- There are to be no restrictions in the deed already encumbering the property that will interfere with the City's intended use of the property; and
- If there are any easements, right-of-way privileges, restrictions or liens encumbering the property, they must be clearly stated on the Information Form or an attachment thereto.
- Preferred dimensions of any proposed lot(s) are 250 feet or more in width and 160 feet or more in depth. Lots with less width and depth dimensions will be considered.
- Vehicular access should be available from both the front and rear of the property.
- Subdivision of larger parcels is acceptable and will be considered on par with stand alone parcels. All zoning categories- business, industrial, residential - will be considered and are acceptable."
- Proposed property may be a single parcel or contiguous parcels constituting the required square footage.

The city retains the right to waive, retain, adjust, modify, enforce, or not enforce any criteria stated herein as it sees fit in the best interest of the City of New Bedford.

SUBMISSION REQUIREMENTS

The Purchasing Department, City Hall, 133 William Street, Rm. 208, New Bedford, MA 02740 must receive five (5) complete printed copies of each proposal, with all attachments. on or before the submission deadline of **Friday July 28, 2017 2:00 PM.** at the City of New Bedford Purchasing Department, City Hall, 133 William Street, Room 208, New Bedford, MA at which time and place the proposals will be opened. All proposals must be labeled "City of New Bedford Purchase of Real Property" and be mailed or hand delivered to the following address:

City of New Bedford Purchasing Department
Attn: Richard Calderon, Assistant Procurement Officer
City Hall
133 William Street, Rm .208
New Bedford, MA 02740

- Proposals received by the City later than the Submission Deadline will be deemed non-responsive and will be rejected.
- All proposals will be date/time stamped as they are received and the City's date/time stamp will be controlling. No proposals will be accepted after the time and date noted. Late delivery of materials due to any type of delivery system shall be cause for rejection.
- Emailed or faxed proposals will be deemed non-responsive and will be rejected, regardless of the date/time received.
- The City will not accept any information or materials submitted after the Submission Deadline unless said information or materials are provided in response to the City's written request for such information or materials.
- Submission requirements are strictly enforced. Proposers are cautioned to hand deliver their proposals or to allow sufficient time for their proposals to be received by mail or other delivery service.

- Prior to the submission deadline, proposers may correct or modify or withdraw a proposal by written notice to the City Purchasing Agent at the address specified above. After the opening of proposals, a proposer may not correct or modify the price or any other provisions of its proposal in a manner prejudicial to the interests of the City or fair competition as determined by the Inspector General of the Commonwealth of Massachusetts. No proposer may withdraw his proposal for a period of one hundred eighty (180) days after the date and time set for the opening of the proposals.
- All proposals shall be unconditional.
- The City reserves the right to request additional information from any and all proposers if it is deemed necessary in order to identify the most advantageous proposal.
- This RFP is issued pursuant to G.L. c. 30B, § 16. The City is interested in securing the property at the lowest responsible price. However, the City reserves the right to award the purchase to the proposer offering the most advantageous combination of property characteristics and purchase price, and shall not be required to award the purchase to the proposer offering the lowest price. The City reserves the right to negotiate the purchase price and other terms with the selected proposer in a manner not prejudicial to fair competition. Any award is subject to obtaining the proper zoning and regulatory approvals to the extent any may be necessary to carry out the purposes of this RFP. Any award is also subject to the authorization and appropriation of City Council.
- The City reserves the right to conduct site visits to verify the information provided in the proposals and to perform detailed evaluations of the property proposed prior to award. The proposer's failure to cooperate with the City in this regard may result in rejection of the proposal.

RFP COMMUNICATIONS:

It is the sole responsibility of the proposer to ascertain the existence of any addenda and/or modifications disseminated by the City, whether or not the same are mailed to, or received by, proposer. As the advertisement and all addendum has and will be published on the City's website all proposers are responsible for checking the City's website for any addenda and/or modifications that are subsequently made to this RFP or the attachments.

The City accepts no liability for and will provide no accommodations to proposers who fail to check for amendments and/or modifications to this RFP and subsequently submit inadequate or incorrect responses.

Proposers with disabilities or hardships that seek reasonable accommodations, which may include the receipt of RFP information and/or addenda and/or modifications in an alternative format, must communicate such requests in writing and accommodation will be made by agreement.

All questions or inquiries concerning this RFP must be sent electronically to richard.calderon@newbedford-ma.gov. All inquiries received by 1:00 p.m. on Friday July 14th, 2017 will be considered. Written responses will be emailed to all applicants on record as having received this RFP. All answers to questions/inquiries will also be posted on the City of New Bedford website.

EVALUATION CRITERIA

Evaluation of proposals will be based upon information provided in the proposals, obtained on site visits and from other generally available and verifiable information. The City reserves the right to request clarification of proposal terms or additional information after the Submission Deadline.

Proposals will be evaluated based upon minimum and comparative criteria. Depending on the terms of the particular proposal, the City may offer to purchase the property from the proposer who submits the most advantageous proposal based on consideration of the specified minimum and comparative criteria, and the price.

Minimum Criteria: Each proposal must meet all of the following criteria in order to be considered for further evaluation:

- ☐ Proposer must have good clear record and marketable title and be able to transfer same to the City. Proposer may use purchase money to clear title.
- ☐ Proposer must submit all required forms properly completed and executed.
- ☐ Proposer must submit all required explanations and documentation required herein.
- ☐ Proposer must meet all the material and mandatory terms and conditions of the form Purchase & Sale Agreement incorporated herein and attached hereto as Attachment A, B, C, D, E, & F and any of its reiterations.

Proposals that do not meet the Minimum Criteria may be judged non-responsive and, in such case, will not be reviewed further.

Comparative Criteria: Proposals that meet the Minimum Criteria listed above will be evaluated by the following Comparative Criteria:

Size of parcel

Highly Advantageous	Upland and buildable portion of parcel at greater than 45,000 square feet
Advantageous	Upland and buildable portion of parcel 40,000 square feet or more but less than 45,000 square feet
Not Advantageous	Upland and buildable portion of parcel is less than 40,000 square feet but more than 30,000.
Unacceptable:	Upland and buildable portion of parcel less than 30,000 square feet

Frontage on City-Accepted Roadway

Highly Advantageous:	125 or more feet of direct frontage upon a city accepted public roadway.
Advantageous:	100 to 125 feet of direct frontage upon a city accepted public roadway.
Not Advantageous:	Less than 100 feet of frontage on a city accepted roadway, or the property does not have direct frontage on a city accepted roadway but provides easement/right of way through private ways.
Unacceptable:	No access without obtaining property or permission from others

Right-Of-Ways, Easements, Restrictions

Highly Advantageous:	There are no right-of-ways or easements either over or under the property, or restrictions affecting the use of the property for the City's intended purpose.
Advantageous:	There are right-of-ways or easements either over or under, or restrictions that affect, the property, but that do not interfere unreasonably with the City's intended use of the property.
Not Advantageous:	There are right-of-ways or easements either over or under, or restrictions affecting, the property that materially affect the use of the property for the City's intended use.
Unacceptable:	There are right-of-ways or easements either over or under, or restrictions affecting, the property that prohibit the use of the property for the City's intended use.

Zoning, Wetlands and other State or Local Statute or Regulation

- Highly Advantageous: Proposer can demonstrate that the City's intended use is permissible under local zoning, state and local wetland laws, and any other applicable state or local law or regulation.
- Advantageous: Proposer can demonstrate that the proposed use of the property is permissible under local zoning, state and local wetland laws, and any other applicable state or local law or regulation upon the issuance of local approvals and permits.
- Not Advantageous: Proposer can demonstrate that the proposed use of the property is permissible under local zoning, state and local wetland laws, and any other applicable state or local law or regulation upon the issuance of approvals and permits authorized by the Commonwealth of Massachusetts (DEP) or United States of America (EPA)
- Unacceptable: The City's intended use of the proposed property is presently not permitted under local zoning, state and local wetland laws, and/or any other applicable state or local law or regulation and no approvals or permits are available to render it permissible.

EVALUATION AND SELECTION PROCESS

The City may conduct site visits of properties offered for sale pursuant to this RFP. The proposer agrees to provide access to the City and its consultants, contractors, agents and representatives to the entire property during the site visit(s) and have someone present with knowledge of the site conditions to answer questions. The City in the selection process will consider information obtained from site visits.

The City, through its evaluation committee, will evaluate proposals in accordance with the evaluation criteria set forth in this RFP and will select the proposal most advantageous to the City, taking into consideration the evaluation criteria and the price.

Any purchase and sales agreement entered into pursuant to this RFP will be subject to City Council authorization and appropriation.

TERMS OF PURCHASE

The Purchase and Sale Agreement to be executed between the City and the successful proposer shall be substantially in the form of the Purchase and Sale Agreement attached hereto as Exhibit A, and shall include, at a minimum, the following mandatory terms:

- No down payment will be made upon execution of the Purchase and Sale Agreement. The City will pay the entire purchase price, at closing, subject to customary and usual adjustments.
- The City does not have a real estate broker representing it, and the seller must agree to defend, indemnify the City against and hold the City harmless from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the City by any broker in connection with this transaction.
- On reasonable notice, the City and its consultants, agents, employees, and representatives however characterized, will be granted access to the property to examine the property, including, without limitation, conducting surveys, soil tests and environmental investigations, and inspections of buildings and other existing structures. The seller shall grant reasonable access to the City and its consultants, contractors, agents and representatives to the proposed property for such inspections and investigations. City may decline purchase of the property at any time based upon results of these investigations.
- The property will be delivered vacant and free of all tenants, occupants and personal property, unless specifically agreed to by both parties in writing.
- The seller shall deliver a good and sufficient quitclaim deed of the property running to the City of New Bedford, which deed shall convey good, clear record and marketable title to the property, subject only to those easements, restrictions and encumbrances which are acceptable to the City and do not interfere with the use of the property for its proposed municipal purpose, including office use.
- If the land is registered, the quitclaim deed must be in form sufficient to entitle the City to an Owner's Certificate of Title, and the property owner shall deliver at closing all documents necessary to enable the City to obtain a Certificate of Title and to satisfy all Land Court and registration requirements.

- The physical and environmental condition of the property and the improvements therein shall be entirely acceptable to the City, in the City's discretion, or the City shall not be obligated to purchase the property.
- The seller shall provide sufficient authority documentation, in recordable form, including, without limitation, as applicable, legal existence and good standing certificates from the Secretary of State, complete incumbency certificates and trustee's certificates, valid current vote(s)/resolution(s), direction of partners, members or beneficiaries, and other documentation reasonably required by the City.
- Taxes for the then current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A. Any taxes paid by the seller prior to the closing shall not be refunded.
- The closing must occur within **one hundred twenty (120)** days from the date the parties enter into the Purchase and Sale Agreement.
- The City shall have no obligation to purchase the property, and the Purchase and Sales Agreement will become null and void if, by way of example, and not limitation:
 1. The City determines at any time prior to closing that the property and/or the improvements thereon are not suitable, for its specific needs.
 2. The information contained in the proposal proves to be inaccurate.
 3. It becomes unlawful for either party to execute the purchase and sale agreement or consummate the transaction.
 4. The City fails to obtain approval and/or funding by an affirmative vote of City Council.
 5. The City finds undisclosed hazardous waste or hazardous materials on the property.
 6. The City fails to comply with the provisions of G.L. c. 30B (the Uniform Procurement Act) for acquisition of real property.
 7. The building on the property is damaged or destroyed by fire, vandalism or other casualty, or all or part of the property is taken by eminent domain by any entity.
 8. The seller fails to waive relocation benefits under G.L. c.79A and 760 CMR 27.03 for itself and all other tenants or other occupants of the property.
 9. The City fails to obtain the proper zoning and regulatory approvals to the extent necessary to use and operate the property for the City's intended purposes.

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

ATTACHMENT A

INFORMATION FORM *Page 1 of 2*

Property Street Address: _____ Map # _____ Parcel ID _____

Total Square footage: _____ Buildable Square footage: _____

a. Amount of Frontage _____ on _____
(# of feet) (Name of City accepted roadway)

Or

- b. Describe valid easement rights over private way(s) leading to a public way duly laid out or accepted as such by the municipality or other government entity, including distance from property to public way and width of easement. Include deed references in the description. If attaching these details, indicate here: _____
- c. Submit a copy of the tax map(s) showing placement of the parcel(s) and a copy of the Assessors property record card(s) for that parcel(s).
- d. Attach a copy of the current deed(s) with the Registry of Deeds Book and Page reference. Include Registry of Deeds reference or Probate Docket of at least two prior property transfers of the parcel(s).
- e. Utilities already adjacent to the parcel or explanation included on how this will be accomplished:
- _____ Yes
- _____ No. If 'No' attach explanation for how this will be accomplished.

City Water, City Sewer, Electrical Power, Cable/ Telephone

- f. In what zoning district is the property?
- g. Are there any structures on the property?
- h. Does the property meet all of New Bedford's Bylaws and regulations?
- i. Are there any right-of-way privileges or easements benefiting the property? If yes, please attach detailed explanation.

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

- j. Are there any right-of-way privileges or easements, burdening the property? If yes, please attach detailed explanation.
- k. Are there any deed restrictions? If yes, please attach detailed explanation.
- l. Attach a description of the current and past uses of the property, including any history of the release or disposal of any oil or other hazardous materials on the property.
- m. Has the property been surveyed? ____ Date of survey: ____
- n. Is the property bounded by survey monuments?
- o. Include a Site Plan or Survey Plan.
- p. List Current Owner(s) name(s), address, preferred phone contact number, and email:
- q. List any liens or mortgages of record, including Registry Book and Page references:

Signed: _____ Date: _____

Printed Name of Above: _____

(Note: This form must be included in the proposal submission)

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

ATTACHMENT B

PRICE PROPOSAL FORM

To the Awarding Authority:

A. The Undersigned proposes to sell the property listed in this Response to the City of New Bedford's Request for Proposal to the City of New Bedford Massachusetts, for the price listed below in accordance with the terms and conditions of the Request for Proposals.

Property Address:

Assessors map and Lot Number:

Registry of Deeds Book and Page:

B. The proposed contract price is

_____ dollars (\$ _____).

This price includes the parcel(s) and all amenities required by this RFP.

Date:

Name of Proposer:

Signature: _____

Business Address:

City, State, and Zip: _____

Phone and Fax. Nos. _____

(Note: This form must be included in the proposal submission)

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

ATTACHMENT C

CERTIFICATIONS

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean natural person, business, partnership, corporation, committee, union, club or other organization, entity, or group of individuals.

Signature: _____

Print Name & Title

Company Name

(Note: This form must be included in the proposal submission)

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

**CERTIFICATE OF TAX
COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b),

I _____, authorized agent for
(Name of signatory)

(Owner of Property)

Do hereby certify under the pains and penalties of perjury that said owner has complied with all laws of the Commonwealth of Massachusetts, and the City of New Bedford, relating to taxes, permit or other fees, reporting of employees and contractors, and withholding and remitting child support.

Date: _____

Signature

(Note: This form must be included in the proposal submission)

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD
ATTACHMENT D**

DISCLOSURE OF BENEFICIAL INTERESTS IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c. 7, § 40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: City of New Bedford
(Name of jurisdiction)

2. Complete legal description of the property:

3. Type of transaction: Sale

4. Seller(s):

Purchaser(s): City of New Bedford

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. Note: *If a corporation has, or will have a direct, or indirect beneficial interest in the real property, the names of all stock holders must also be listed except that, if the stock of the corporation is for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.*

	Address
_____	_____
_____	_____

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

5. (Continued)

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts or is an employee of the Division of Capital Asset Management and Maintenance, except as noted below:

		Title or position

6. This section must be signed by the individuals (s) or organization (s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature:

Printed name:

Title:

Date:

(Note: This form must be included in the proposal submission)

**PROPOSAL TO SELL REAL PROPERTY TO
THE CITY OF NEW BEDFORD**

ATTACHMENT E

At a meeting of the Board of Directors of _____ duly called and held on _____, 20____ at which a quorum was present and acting throughout, the following vote was duly adopted.

VOTED: That _____, the _____ of the corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name and behalf of the corporation contract documents with the City of New Bedford, the above mentioned documents to include but not be limited to Bids, Proposals, Deeds, Purchase and Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and also to seal and execute, as above, surety company bonds to secure bids and proposals and the performance of said contract and payment for labor and materials, all in such form and on such terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy

ATTEST:

Name (printed)

_____ (Affix Corporate Seal)

Signature

Title

Date

(Note: This form must be included in the proposal submission)

EXHIBIT A

PURCHASE AND SALE AGREEMENT

SECTION 1 INFORMATION AND DEFINITIONS

1.1 DATE OF THIS AGREEMENT: _____, 2017

1.2 PREMISES: City: New Bedford, Massachusetts

Street Address:

Title Reference: Bristol County (S.D.) Registry of Deeds Bk. _____, Pg. _____

If Registered Land: Certificate of Title No. _____

Assessor's Map Reference: Assessors Map _____, Lot _____

1.3 SELLER:

Address:

Seller's Attorney:

Address:

Phone:

Fax:

1.4 BUYER:

City of New Bedford

Address:

133 William Street, New Bedford, MA 02740

Buyer's Attorney:

Office of the City Solicitor

Address:

133 William Street, New Bedford, MA 02740

Phone:

508-979-1460

1.5 PURCHASE PRICE:

Total Sum of \$ _____,
paid at the time of delivery of the Deed by certified or
bank check or municipal treasurer's check

1.6 CLOSING DATE: _____, 201__ at Noon.

1.7 PLACE: Bristol South District Registry of Deeds

1.8 TITLE: Quitclaim Deed

1.9 BROKER: None

SECTION 2 -- GENERAL PROVISIONS

2.1 Covenant. Seller agrees to sell and Buyer agrees to buy the Premises upon the terms hereinafter set forth.

2.2 Buildings, Structures, Improvements, Fixtures. Included in the sale as a part of said Premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to SELLER and used in connection therewith.

2.3 Title Deed. Said Premises are to be conveyed by a good and sufficient quitclaim deed running to BUYER, or to the assignee or nominee designated by BUYER by written notice to SELLER at least seven calendar days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this agreement; and
- (e) Easements, restrictions and reservations of record, if any, provided the same do not interfere with use of and access to the Premises for general municipal purposes, including, without limitation, for office space purposes.

2.4 Deed; Plans. SELLER shall be responsible for drafting the deed. If said deed refers to a plan necessary to be recorded therewith SELLER shall deliver such plan with the deed in a form adequate for recording or registration.

2.5 Registered Title. In addition to the foregoing, if the title to said Premises is registered, said deed shall be in a form sufficient to entitle BUYER to a Certificate of Title of said Premises, and SELLER shall deliver with said deed all instruments, if any, necessary to enable BUYER to obtain such Certificate of Title.

2.6 Possession and Control of Premises. Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 2.3 hereof. BUYER shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

2.7 Extension to Perfect Title or Make Premises Conform. If SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, and thereupon the time for performance hereof shall be extended for a period of thirty calendar days.

2.8 Failure to Perfect Title or Make Premises Conform. If at the expiration of the extended time SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

2.9 Buyer's Election to Accept Title. BUYER shall have the election, at either the original or any extended time for performance, to accept such title as SELLER can deliver to the said Premises in their then condition and to pay therefore the purchase price, without deduction, in which case SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then SELLER shall, unless SELLER has previously restored the Premises to their former condition, either

- (a) pay over or assign to BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by SELLER for any partial restoration, or
- (b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amount reasonably expended by SELLER for any partial restoration.

2.10 Acceptance of Deed. The acceptance of a deed by BUYER, or its assignee or nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

2.11 Use of Money to Clear Title. To enable SELLER to make conveyance as herein provided, SELLER may, at the time of delivery of this deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or, if an institutional mortgage, within a reasonable time thereafter in accordance with customary conveyancing practices.

2.12 Adjustments. Outstanding water and sewer charges, fuel value, and other items shall be adjusted as of the closing date. Taxes for the then current fiscal year shall be adjusted in accordance with G.L. c. 59, § 72A. Any taxes paid by SELLER prior to the closing shall not be refunded. If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year.

2.13 Brokers. BUYER and SELLER each represent and warrant to the other that each has not contacted any real estate broker in connection with this transaction and was not directed to the other as a result of any services or facilities of any real estate broker. BUYER and SELLER agree to defend, indemnify the other against and hold the other harmless, to the extent permitted by law, from any claim, loss, damage, costs or liabilities for any brokerage commission or fee which may be asserted against the other by any broker in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

2.14 Contingencies. BUYER'S performance hereunder is, at BUYER'S option, expressly subject to the following conditions:

- (a) BUYER obtaining a favorable vote of City Council in the City of New Bedford authorizing the BUYER to acquire the premises for the consideration stated herein and upon the terms set forth in this offer and authorizing the appropriation of sufficient funds for that purpose;
- (b) BUYER shall have complied with the provisions of G.L. c.30B (the Uniform Procurement Act) for acquisition of real property;
- (c) SELLER shall have complied with the disclosure provisions of G.L. c.7, §40J, and SELLER and BUYER agree to diligently pursue full compliance with said statute. SELLER hereby agrees to execute a "Disclosure of Beneficial Interests in Real Property Transaction" certificate as required by G.L.c.7, §40J;
- (d) SELLER shall have obtained written waivers of any right to claim relocation benefits under the provisions of G.L. c.79A and 760 CMR 27.03 from all occupants of the Premises and SELLER shall represent and warrant in writing at closing that all such waivers have been provided as to all occupants. SELLER hereby agrees to waive any rights SELLER may have to relocation benefits under the provisions of M.G.L. c. 79A;

Furthermore, SELLER shall defend, indemnify and hold BUYER harmless as to any claim for relocation benefits or payments brought against BUYER by any former or present occupant (or future occupant between now and the Closing Date) of the Premises and pay any costs incurred by BUYER resulting from any such claim. The provisions of this paragraph are expressly agreed to survive the delivery of the deed;

(e) Buyer shall have inspected the Premises (including the environmental inspections as set forth more particularly in Section 2.20) and SELLER'S title to the Premises and be satisfied with the condition thereof, in its sole and absolute discretion; and

(I) Any other requirements of the Massachusetts General or Special Laws relative to the acquisition of property by BUYER.

Provided, however, that if any of the foregoing conditions are not satisfied by _____, 2017, BUYER shall have the option of extending the closing date until such conditions are satisfied, and further provided that the closing date shall not be extended beyond _____, 20____, provided that BUYER shall give SELLER days written notice of its exercise of this option prior to the closing date and shall give SELLER seven days written notice of the new closing date.

2.15 Title to Premises. Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this agreement with respect to title unless:

- (a) no building, structure, utility or improvement of any kind belonging to any person or entity encroaches upon or under the Premises from other premises;
- (b) title to the Premises is insurable, for the benefit of BUYER, by a title insurance company acceptable to BUYER, in a fee owner's policy of title insurance at normal premium rates, in the American Land Title Association form currently in use, containing no exception for any matter not expressly permitted by this Agreement;
- (c) all buildings, structures and improvements, including but not limited to, any driveways, garages and cesspools or leaching fields, and all means of access to the Premises, shall be located completely within the boundary lines of the Premises and shall not encroach upon or under any other property;
- (d) the Premises abut a public way, duly laid out or accepted as such by the municipality in which the Premises are located; and
- (e) the Premises are not in a flood zone;

2.16 Affidavits, etc. Simultaneously with the delivery of the deed, SELLER shall execute and deliver: (a) Affidavits and indemnities under oath with respect to parties in possession and mechanic's liens to induce BUYER'S title insurance company to issue lender's and owner's policies of title insurance without exception for those matters, and SELLER shall indemnify and hold harmless the title insurance company for any losses, costs, or damages

sustained as a result of issuing a policy without exceptions covered by such representations; (b) An affidavit, satisfying the requirements of Section 1445 of the Internal Revenue Code and regulations issued thereunder, which states, under penalty of perjury, SELLER'S United States taxpayer identification number, that SELLER is not a foreign person, and SELLER'S address (the "1445 Affidavit"); (c) Internal Revenue Service Form W-8 or Form W-9, as applicable, with SELLER'S tax identification number, and an affidavit furnishing the information required for the filing of Form 1099S with the Internal Revenue Services and stating Seller is not subject to back-up withholding; and (d) Such additional and further instruments and documents as may be consistent with this Agreement and customarily and reasonably required by BUYER and/or the BUYER'S title insurance company to complete the transactions described in this Agreement.

2.17 Title Standards. Any matter or practice arising under or relating to this agreement which is the subject of a title standard or a practice standard of the Real Estate Bar Association at the time for delivery of the deed shall be covered by said title standard or practice standard to the extent applicable.

2.18 Hazardous Materials. SELLER shall provide BUYER with information of any past or current release or threat of release, or the presence of "hazardous materials" and "oil" on the Premises, as such terms are defined in G.L. c. 21E, and copies of all environmental tests, studies, and assessments relating to the Premises and copies of all notices of noncompliance or responsibility received from the Department of Environmental Protection or any other federal, state, or local governmental body. The provisions of this paragraph shall survive the delivery of the deed.

2.19 Representations and Warranties. SELLER represents and warrants to BUYER, effective as of the date of this Agreement and also effective as of the date of closing (subject to any subsequent notice from SELLER as hereinafter set forth), that:

- (a) To the best of SELLER'S knowledge, SELLER holds good and clear, record and marketable title to the Premises in fee simple, and SELLER has not granted any options, rights of first refusal, or other contracts have been granted or entered into which give any other party a right to purchase or acquire any interest in the Premises;
- (b) SELLER has not entered into leases, licenses, or other occupancy agreements (whether written or oral) in effect with respect to any part of the Premises;
- (c) SELLER has no present knowledge of and will disclose and deliver all received written notices of, any planned or threatened condemnation or eminent domain proceedings with respect to the Premises;
- (d) This Agreement has been duly authorized by all requisite action is not in contravention of any law or organizational documents and this Agreement has been duly executed by a duly authorized officer of SELLER;
- (e) To the best of SELLER'S knowledge, SELLER'S execution of this Agreement does not violate any other contracts, Agreements, or any other arrangements of any nature whatsoever that SELLER has with third parties.

(I) To the best of SELLER'S knowledge, information and belief, (i) Seller has not received notice of any release of any hazardous materials or oil on, from or near the Premises (as used in this Agreement, the terms "release," "hazardous materials" and "oil" shall have the meaning given to them in M.G.L.c.21E), (ii) there are no underground storage tanks or other subsurface facilities holding petroleum or oil products currently in use or previously abandoned on the Premises and (iii) chlordane has not been used as a pesticide on the Premises;

(g) SELLER has received no written notice from any governmental authority or agency having jurisdiction over the Premises of any environmental contamination, or the existence of any hazardous materials at the Property in violation of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601, et seq. (CERCLA), or any similar federal, state or local statute, rule or regulation; and

(h) No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under Federal or State bankruptcy laws is pending against or contemplated by SELLER.

SELLER will not cause nor, to the best of SELLER'S ability, permit any action to be taken which would cause any of SELLER'S representations or warranties to be false as of closing, and in any event shall notify BUYER of any change in these representations and warranties. SELLER'S representations and warranties shall survive the closing and the delivery of the deed.

2.20 Inspection Rights. BUYER or BUYER'S agent(s) shall have the right, at any time, to enter the premises at BUYER'S own risk for the purposes of conducting surveys, inspections and tests, and environmental site assessments, including testing building, mechanical, and plumbing systems of the building on the premises or for any and all investigations leading to the design or renovations of the existing building by the BUYER. BUYER, to the extent permitted by law, shall hold SELLER harmless against any claim by BUYER of any harm to BUYER arising from said entry and shall restore the premises to substantially the same condition as prior to such entry if the closing does not occur. BUYER'S performance hereunder is expressly conditional, at BUYER'S option, upon BUYER being satisfied with the condition of the premises and/or the building thereon and on not having found on the premises any hazardous waste or hazardous material. In the event hazardous waste or hazardous material is found, or BUYER is not satisfied with the condition of the premises or the building, BUYER shall have the right, to be exercised in its sole and absolute discretion, to (a) terminate this agreement, whereupon all the rights and obligations of the parties shall cease, or (b) provide SELLER with the option, to be exercised in SELLER'S sole discretion, to repair the condition of the premises/building and/or remediate such hazardous condition, with SELLER paying all of the costs of repair/remediation. If BUYER requests SELLER to repair the premises/building and/or remediate the hazardous condition, and SELLER elects to undertake the same, BUYER

shall perform under the terms of this agreement, provided, however, that SELLER repairs the premises/building to BUYER's reasonable satisfaction and/or remediates the hazardous condition within a reasonable time and in full compliance with all applicable laws, rules, and regulations; otherwise this agreement shall be null and void and of no further effect between the parties. Nothing herein shall affect BUYER'S rights under this agreement to walk through and inspect the premises at any time prior to the delivery of the deed.

2.21 NOTICES: Any notice required or permitted to be given under this agreement shall be in writing and signed by the party or the party's attorney or agent and shall be deemed to have been given (a) when delivered by hand, or (b) when mailed by Federal Express or other similar courier service, or (c) by facsimile:

In the case of BUYER:

Purchasing Agent
City of New Bedford
133 William Street, Rm. 208
New Bedford, MA 02740

In the case of SELLER:

with a copy to:

2.22 Closing. The deed and other documents required by this agreement are to be delivered and the Purchase Price paid at the Date and Time of Closing and at the Place of Closing. All documents and funds are to be delivered in escrow subject to prompt rundown of title and recording, which term shall include registration in the case of registered land. SELLER'S proceeds may be in the form of a City Treasurer's check, and the check shall be held in escrow by SELLER'S attorney who shall release the check to SELLER only following the recording of the deed.

2.23 Condition of Premises at Closing. SELLER agrees to deliver the Premises at the time of delivery of SELLER'S deed in a condition substantially similar to its condition at the time of the signing of this agreement, removing all of SELLER'S personal property therefrom which is not being sold to BUYER, or left for its benefit, as consented to by it.

2.24 Casualty. Notwithstanding anything herein to the contrary, in the event of damage to or destruction of the Premises by fire, vandalism or other casualty, or in the event of a taking of all or part of the Premises by eminent domain by any entity, then at BUYER'S sole option, this agreement may be terminated.

2.25 Release by Husband or Wife. SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.

2.26 Liability of Trustee, Shareholder, Fiduciary, etc. If SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

2.27 Construction of Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both SELLER and BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

2.28 Smoke Detectors. SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said Premises are located stating that said Premises are equipped with approved smoke detectors in conformity with applicable law.

2.29 Septic System. If the Premises are served by a subsurface sewage disposal system, SELLER shall deliver a Title V Certificate to BUYER at the closing, indicating that the on-site septic system serving the premises complies with the provisions of Title 5.

2.30 Extensions. BUYER and SELLER hereby authorize their respective attorneys (as the case may be) to execute on their behalf any extensions to the time for performance and any change of location and/or time for delivery of the deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent to such extensions, that either party has disclaimed the authority granted herein to bind them. For purposes of this Agreement, facsimile signatures shall be construed as original.

2.31 Taking. SELLER hereby waives any right to claim additional damages in excess of the Purchase Price in the event BUYER elects to acquire title to the Premises by a friendly eminent domain. At BUYER'S request, SELLER shall execute a Waiver of Damages, Appraisal, and Relocation Benefits under G.L. c. 79A and shall deliver it to BUYER at the closing. SELLER acknowledges that BUYER shall have the right to deduct from the Purchase Price any real estate taxes, amounts that are to be paid to mortgagees from closing proceeds, and such other fees and charges that are customarily apportioned between a

buyer and seller as of the closing date.

2.32 Errors. If any errors or omissions are found to have occurred in any calculations or figures used in the settlement statement signed by the parties (or would have been included if not for any such error or omission) and notice thereof is given within sixty (60) days of the date of delivery of the deed to the party to be charged, then such party agrees to make payment to correct the error or omission.

2.33 **Captions**: The captions and headings throughout this agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this agreement, nor in any way affect this agreement, and shall have no legal effect.