

**Request for Proposals  
CITY OF NEW BEDFORD**

**Lease-Purchase**

**Former Thomas A. Greene Elementary School  
32 Madison Street, New Bedford, Massachusetts**

# \_\_\_\_\_



**[Insert date]**

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## Lease-Purchase of Former Greene Elementary School Advertisement and Lease Description

### REQUEST FOR PROPOSALS ADVERTISEMENT

The City of New Bedford (the "City") hereby solicits proposals from qualified proposers to enter into a long-term (25-year) lease-purchase agreement pursuant to which the proposer will lease the former Thomas A. Greene Elementary School for the purpose of operating a pre-school, day care, head start, or related elementary school facility. The lease-purchase agreement shall commence on July 1, 2022. The subject parcel is located at 32 Madison Street, New Bedford, contains 17,310 square feet, more or less, and is shown on City of New Bedford Assessor's Map 42 as Lot 1 (the "Land"). The Land is improved by a building formerly known as the Greene Elementary School (the "School" or the "Building", and, with the Land, the "Property"). The Property has been used since 1992 as the home of the PACE Head Start Program, which has a lease on the Property that expires on June 30, 2022. There is off street parking for approximately ten (10) cars.

The City has established a **minimum annual base rent of Dollars (\$57,000)** to be paid for the first lease year, which base rent shall increase annually by at least three percent (3%) during the term of the lease. Payments will be made in equal monthly installments, in advance. At the expiration of the lease term, the successful proposer may purchase the Property for One Dollar (\$1.00) or, should the lessee exercise its right to purchase the Property prior to the expiration of the lease term, upon the payment of sums equal to the base rent for the balance of the lease term.

Interested parties may obtain the Request for Proposals at the City of New Bedford Purchasing Department, 133 William Street, Room 208, New Bedford, Massachusetts 02740, during normal business hours (Monday through Friday, 8:30 AM - 4:00 PM) or by contacting \_\_\_\_\_ at \_\_\_\_\_ (phone) and \_\_\_\_\_ (email).

The Request for Proposals will be available for pick-up at the above address on \_\_\_\_\_, 2019.

Each proposal must contain a Non-Price Proposal and a Price (Rent) Proposal submitted together in a single sealed envelope, clearly marked "Proposal for Lease-Sale of 32 Madison Street" along with the name of the proposer in accordance with the submission requirements set forth in the Request for Proposals. A proposal deposit of Five Thousand Dollars (\$5,000) shall be submitted with each proposal in the form of bank check, certified check or Bid Bond, and shall be made payable to the City of New Bedford, Massachusetts. Proposers shall submit one (1) original and five (5) copies of each Non-Price and Rent Proposal.

Questions concerning this Request for Proposals shall be submitted in writing to: Susan Bruce, 133 William Street, New Bedford, MA, and must be received by the City on or before 10:00 A.M. on \_\_\_\_\_ 2019. Questions must be hand-delivered, mailed, or faxed prior to the submission deadline. A written Addendum to this RFP responding to the questions will be e-mailed or faxed to all parties on record as having obtained the RFP.

The Purchasing Department will receive and open all proposals in the office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740. Proposals shall be opened publicly at the time and place designated in the advertisement.

**Proposals must be received no later than:**

\_\_\_\_\_, 2019  
**3:00 P.M. Eastern Time**

The City reserves the right unilaterally to extend the time for award for up to sixty (60) days after the scheduled award date. Thereafter, award date may be extended by mutual agreement of the City and apparent high bidder.

A PROPOSAL THAT DOES NOT INCLUDE THE PROPOSAL DEPOSIT OF \$5,000 WILL BE REJECTED. After bids have been opened, no proposal may be withdrawn for a period of one hundred twenty (120) days, except as provided for in this RFP.

Proposers are required to submit one (1) original and five (5) copies of the Proposal Package. All proposals must include a signed and completed Non-Collusion Form, Certificate of Tax Compliance, Certificate of Authority, and Disclosure of Beneficial Interest Statement. Neither this advertisement nor the Request for Proposals constitutes an offer.

The City is the Awarding Authority and reserves the right to waive any informality it deems minor in this solicitation. The Awarding Authority also reserves the right to reject any or all proposals or to accept a proposal that does not offer the highest price/rent if it deems it in the best interest of the City.

The schedule of this solicitation is as follows:

**Schedule**

Advertise Solicitation	
Solicitation Available	
Final date for submission of questions	
Responses Due	
Distribute Proposals to Committee	
Recommendation to Treasurer	
Award	

AWARDING AUTHORITY  
CITY OF NEW BEDFORD  
133 William Street  
New Bedford, MA 02740



## **Lease-Purchase of Former Greene Elementary School Site Information**

### **1.1 Lease Vision**

The City of New Bedford (City) is seeking proposals for the lease of the parcel of land located at 32 Madison Street, New Bedford, containing 17,310 square feet, more or less (the "Land"), with the former Greene Elementary School thereon (the "School" or the "Building", and, with the Land, the "Property"), as an opportunity to continue its existing educational operation as a day care, pre-school, head start, or other related pre-elementary school level facility to serve low and moderate income families throughout the City.

### **1.2 Project Objectives**

The School is situated in New Bedford's downtown urban section and serves a densely populated area. A significant number of potential clients are within walking distance of the School. The City's primary objective for this Property is to continue its present use as a day care, pre-school, head start, or other related pre-elementary school level facility to serve low and moderate income families throughout the City. The successful proposer will lease the Property for a period of twenty-five (25) years with an option to purchase the Property upon the expiration of the lease in its then as-is condition for payment of One Dollar (\$1).

### **2.1 Legal Description**

The Property is identified as Lot 1 on City of New Bedford Assessor's Map 42 and zoned Residential C.

### **2.2 Property History**

The School was operated by the City as the Thomas A. Greene Elementary School until 1992, when it was leased to People Acting in Community Endeavors, Inc. (PACE). PACE has operated a Head Start Program on the Property up to the present date and has a lease on the Property that expires on June 30, 2022.

### **2.3 Property Description and Use**

The Property consists of approximately 17,310 square feet of land with a three (3)-story plus basement brick school building constructed around 1910. The zoning is Residential C. The School is brick construction with a slate roof. The attached Assessor's Card shows the actual building

dimensions. The building footprint is approximately 82 ft. x 79 ft. There is a paved 8000 sq. ft. lined parking lot on site with 10 spaces.

The basement, first floor, second floor, and finished attic each have 7,542 sq. ft., for total of 30,170 +/- sq. ft. of useable space. There is elevator access to all four levels. The heat is gas forced hot water. The Building was generally remodeled in 1991 and is in average condition. The Building is handicapped accessible.

#### **2.4 Transportation Access**

The area is serviced by SERTA bus route and is within walking distance of the SERTA bus station at the corner of Pleasant and Elm Streets.

#### **2.5 Environmental Site Assessment and Planned Remediation**

The City is not aware of any contamination being present on the Property and, to the City's actual knowledge, there have been no remediation measures conducted on the Property. There are no City records of oil spillage or other hazardous waste releases at the Property. Proposers are cautioned that they will accept the Property in its AS-IS condition, and agree that the City has made no representations or warranties as to the condition of the Property, including, without limitation, as to the presence of any hazardous materials or substances within the Property.

#### **2.6 Utilities**

The Property is well served by electric, gas, City water, City wastewater, and telecommunications infrastructure.

#### **2.7 Assessed Value**

Building: \$1,318,800  
Yard items: \$6,400  
Land Value: \$94,100  
Total: \$1,416,500

The Property is presently leased for \$50,000 per year.

#### **2.8 Available Economic Development Incentives**

The long-term lease-purchase agreement provides opportunities not otherwise available for grants and other financial incentives relating to the provision of pre-school education.

#### **2.9 Proposal Assumptions**

Any new tenant must obtain an occupancy permit from the City's Inspectional Services Department. Any modifications to the Property will require a building permit from the Inspectional Services Department. Uses similar to present use as day care, Head Start, pre-school, etc. will also require Board of Health inspections. The Property is subject to annual fire and building inspections to ensure compliance with all applicable Fire and Building Code provisions.

## **2.10 Site Investigation**

The City shall give the selected proposer the opportunity to conduct such inspections, tests, studies as it deems necessary or convenient to satisfy itself as to the condition of the Property and determine if it is suitable for the proposer's intended use, including, without limitation, environmental assessments, all as set forth more particularly in Section 4.2 and on the terms and conditions stated in the Site Access Agreement attached hereto and incorporated herein (Attachment K).

## **2.11 City of New Bedford Taxes**

While the Property is presently tax-exempt, proposers are advised to review the provisions of G.L. c. 59, §2B.

## **2.12 Minimum Rent**

The City has established a **minimum annual base rent of Fifty-Seven Thousand Dollars (\$57,000)** to be paid over the course of a twenty-five (25) year lease term, to be paid in advance in equal monthly installments, with rent being increased annually by at least three percent (or such higher number as the proposer may offer). At the expiration of the lease term, the successful proposer may purchase the Property for One Dollar (\$1.00). The City may reject any rent proposal offering base rent in an amount less than the minimum bid specified herein. *Since the amount of the base rent paid is an important evaluation criterion, proposers are encouraged to offer more than the minimum base rent amount stated herein.*

Proposers are advised that the successful proposer, in addition to paying the City the minimum base rent for the Property, will be responsible for any and all payments related to the Property during the term of the lease, including, without limitation, utilities, taxes, insurance, and costs of maintenance, repair and/or replacement.

The City is interested in leasing the Property at the highest base rent. However, the City reserves the right to make an award to a proposal that offers other than the highest base rent. The City will consider the overall value of the offer based on the selection criteria set forth herein.

## **2.13 Lease-Purchase Agreement**

The successful proposer ("Lessee") and the City shall enter into a lease-purchase agreement substantially similar to the Lease-Purchase Agreement attached hereto as Exhibit L and incorporated herein (the "Agreement") within thirty (30) days from the date of the award (the "Execution Date"). The term of the Agreement shall commence at the expiration of the Diligence Period (the "Commencement Date"), as set forth more particularly below. Lessee will pay the City annual base rent (in the minimum amount of \$57,000 per year) over the term of the twenty-five (25)-year lease, to be paid in equal monthly installments in advance on or before the first day of each month, with base rent increasing every year by at least three percent (3%). At the expiration of the term of the Agreement, the City will convey the Property to Lessee upon satisfaction of all terms and conditions set forth in the Agreement.

Proposers are advised that neither the base rent payments nor any other payments made under the Agreement shall establish any equity in the Property, and Lessee shall not accrue or be entitled to any equity in the Property by virtue of payment of any sums due under the term of the Agreement, it being understood that the payments made under the Agreement during the lease term are a fee to be paid to the City for the use and/or occupancy of the Property. In the event that the Agreement is terminated for any reason other than the City's default, the City shall have no obligation whatsoever to make any payments or refund any payments to Lessee.

The Agreement will be a triple-net lease, and Lessee shall be solely responsible for the repair and maintenance of the Property, including the improvements thereon, and payment of insurance and taxes.

**While the City believes that the information provided in this RFP, including all exhibits and addendums, if any, is accurate, the City makes no representation or warranty, express or implied, as to the accuracy and/or completeness of the information in this RFP. The proposer assumes all risk in connection with the use of the information, and releases the City from any liability in connection with the use of the information provided by the City. Further, the City makes no representation or warranty with respect to the Property, including without limitation, the value, quality or character of the Property or its fitness or suitability for any particular use and/or the physical and environmental condition of the Property. The Property will be sold in its "AS-IS" condition.**

**Each proposer shall undertake its own review and analysis (due diligence) concerning the physical and environmental condition of the Property, applicable zoning and other land use laws, required permits and approvals, and other development, ownership, and legal considerations pertaining to the Property, and the use of the Property, and shall be responsible for applying for and obtaining any and all permits and approvals necessary or convenient for the proposer's use of the Property. All costs and expenses of using the Property, including without limitation, all costs of permitting and improvements, shall be the sole responsibility of the successful proposer.**





## **Lease-Purchase of Former Greene Elementary School Selection Process**

### **3.1 Evaluation of Proposals**

All Proposal Packages submitted in response to this Request for Proposals will be opened in public at the deadline for the submission of proposals and thereafter reviewed by an Evaluation Committee. The Evaluation Committee will screen each Proposal Package to ensure that all submittals required by the Request for Proposals are included and that the proposal meets the Minimum Evaluation Criteria set forth below. The Evaluation Committee then will review each proposal that it considers complete and to have met the Minimum Evaluation Criteria against the Comparative Evaluation Criteria set forth below and assess which proposals are highly advantageous, advantageous, not advantageous or unacceptable.

The Evaluation Committee shall make its recommendation to the City Council Property Committee after all qualified proposals have been evaluated. The City will choose the proposal that it deems to be in the best interests of the City, taking into consideration the rent and the other evaluation criteria set forth in the Request for Proposals. The Committee and/or other City officials may interview and/or meet with some or all of the proposers and ask questions regarding their respective proposals, in its sole discretion. The City reserves the right, in its sole discretion, to reject at any time any or all proposals, to withdraw the RFP, to select finalists to submit and negotiate a more fully-developed response, to negotiate with one or more proposers, and/or negotiate and lease the Property on terms that are not materially different from those set forth herein. The City also reserves the right, at any time and to waive strict compliance with terms and conditions of this RFP or to entertain reasonable modifications or additions to selected proposals provided the same are not materially different from the terms set forth herein. Further, the City may cancel this Request for Proposals, reject in whole or in part any and all proposals, or refuse to enter into a lease for the Property, if the City determines that such cancellation, rejection or refusal serves the best interests of the City.

Proposer agrees that by submission of its proposal that it will not withdraw or modify its original price proposal if the City and Proposer do not agree as a result of negotiations to modify the original price offered by Proposer.

### **3.2 Evaluation Criteria**

Each proposal must be sufficiently detailed and contain sufficient information to permit the Evaluation Committee to determine if the proposal has satisfied the Minimum Evaluation Criteria and is able to evaluate the proposal under the Comparative Evaluation Criteria, both of which are set forth below.

## **A. Minimum Evaluation Criteria:**

Each proposal must comply with the submission requirements set forth below, which are generally referred to as "Minimum Evaluation Criteria":

### **1. Proposal Package**

Each Proposal Package must contain two parts: (a) the Non-Price Proposal, which addresses the Comparative Evaluation Criteria, and (b) a completed Rent Proposal, in the form attached to this RFP as Attachment A. Both the Rent Proposal and the Non-Price Proposal must be submitted together in a sealed envelope, referred to as the "Proposal Package." The name of the person or entity submitting the Proposal Package and the title of the project, "**Proposal for Lease-Purchase of Greene Elementary School**" must also appear on the outside front of the submittal. Each page of the binder should be numbered consecutively from the beginning of the response through all appended material.

### **2. Qualifications**

Each Non-Price Proposal shall include at least the following items in the binder marked "Qualifications":

- a. A detailed description of the proposer that illustrates the proposer's qualifications to fulfill the requirements of this Request for Proposals.
- b. Background data and qualifications of all participants (individuals and organizations) who will play a role in the educational program(s) to be provided.
- c. An entity background statement for the proposer, to include:
  - Name of legal entity;
  - Addresses and telephone numbers of all entity offices;
  - Structure of entity, i.e., individual, partnership, corporation, I.I.C;
  - Size of entity;
  - Years entity has been in business;
  - Current financial statement and balance sheet and lender commitments to the entity;
  - Names of principals in the entity;
  - Education and experience of entity principals and those who will be working at the school;
  - Names of those in the entity who will be working at the school and a copy of their licenses, registrations or certifications (if applicable);
  - The name, address and telephone number of individuals who are familiar with the entity and can be contacted as references;
  - A list of any actions taken by any regulatory agency or litigation involving the entity or its agents or employees with respect to any past school operations.
- d. Basic submittals, to include:
  - A signed and dated Rent Proposal Form, Attachment "A" hereto.

- An executed Tax Compliance Certification, Attachment “B” (individual) or Attachment “C” (corporate or other legal entity) hereto.
- An executed Disclosure of Beneficial Interests in Real Property Transaction, Attachment “D” hereto.
- An executed Certificate of Non-Collusion, Attachment “E” hereto.
- If an entity submits the proposal, an executed Certificate of Authority, Attachment “F” hereto.
- An executed Affidavit of Non-Conviction of Crimes Related to Arson, Attachment “G” hereto.
- An executed Acknowledgment of Solicitation Requirements, Attachment “H” hereto.
- An identification of the properties that the proposer owns in the City of New Bedford, if any, and the tax history of said property, Attachment “I” hereto, will be reviewed by the City of New Bedford. A proposer cannot be delinquent in the payment of taxes on any property in the City of New Bedford or must be current in a pre-existing repayment agreement with the City of New Bedford Treasurer’s Office. Proposers must also state if the City of New Bedford has ever foreclosed on property they have ever owned and describe the circumstances that resulted in the foreclosure(s).
- A disclosure of proposer’s history of violations of the Health Code and Building Code, Attachment “J” hereto, which will be reviewed by the City of New Bedford. Proposers must also state if they currently own any properties on which there are outstanding Health or Building Code violations.

**B. Comparative Evaluation Criteria:**

The Evaluation Committee will use the following Comparative Evaluation Criteria to evaluate the Non-Price Proposal. Proposers are advised to reference these Comparative Evaluation Criteria when preparing their proposals and to submit sufficient information under each category to permit the Evaluation Committee to fairly and responsibly assess the proposals.

	Highly Advantageous	Advantageous	Not Advantageous	Unacceptable
1. Quality of pre-school programs intended to be implemented at the Property based on content of programs.	Emphasizes basic reading and other fundamental skills, including computer skills, accompanied by great variety of educational activities. Awards and certification of offered programs highly scored.	Emphasizes basic reading and other fundamental skills, including computer skills, accompanied by great variety of educational activities. No awards or certifications.	Basic reading and other fundamental skills taught. No computer skills offered. Variety of educational activities limited.	Basically, a baby-sitting service.
2. Quality of pre-school programs intended to be implemented at the Property based on income levels of intended participants (low to moderate income participants vs. higher income participants)	Focuses on low to moderate income levels prevalent in area and offers incentives (financial or otherwise making participation more accessible)	Focuses on low to moderate income levels prevalent in area.	Does not focus on low to moderate income levels prevalent in area.	Focuses on higher income levels not prevalent in area.
3. Financial capacity of the proposer to fulfill the terms of Lease-Purchase Agreement, including maintenance of the Building structure under a triple net lease.	Two years' financial statements along with letters of reference or commitments from lenders exhibiting solvency and long-term financial stability.	One year's financial statement along with letters of reference or commitments from lenders exhibiting solvency and long-term financial stability.	One year's financial statement exhibiting solvency and long-term financial stability.	Financial stability in question.

	Highly Advantageous	Advantageous	Not Advantageous	Unacceptable
4. REFERENCES RE FACILITIES: Public and private references regarding compliance with lease terms and/or maintenance of property. Any complaints with appropriate building departments regarding property condition.	Compliance with all terms of lease. All maintenance issues promptly addressed. Facilities maintained in excellent condition. No complaints.	Compliance with essential terms of lease. Essential maintenance issues promptly addressed. Facilities maintained in good condition. No complaints.	Some non-compliance with terms of lease. Essential maintenance issues addressed. Facilities maintained in good condition. Few complaints.	Many instances of non-compliance with terms of lease. Maintenance issues not addressed. Facilities not maintained in good condition. Several complaints. One or any combination of the above.
5. Experience with pre-school, Head Start, day care, kindergarten, or other pre-elementary school programs.	More than ten years' experience.	Less than ten but more than five years' experience.	One to five years' experience.	No experience.
6. Proposed transaction terms	Proposal does not include conditions other than those proposed by the City in this solicitation.	Proposal includes only minor conditions other than those proposed by the City in this solicitation.	Proposal includes negotiable conditions, 1 to 5 of which are unacceptable to the City.	Proposal includes non-negotiable significant conditions which are unacceptable to the City.

### 3.3 Submission Requirements

Each proposal must contain a Non-Price Proposal (in a sealed envelope) and a Rent Proposal (in a sealed envelope), which are submitted together in a single sealed envelope, clearly marked, "Proposal for Lease-Purchase of Greenc Elementary School," along with the name of the proposer in accordance with these submission requirements. A proposal deposit of \$5,000 shall be submitted with each proposal in the form of certified or bank check, or Bid Bond, payable to the City of New Bedford. Deposits will be returned to the unsuccessful proposers. In the event that the successful proposer fails, through no fault

of the City, to meet all requirements of this Request for Proposals or enter into a Lease-Purchase Agreement for the Property, the City will retain the proposal deposit. The proposal deposit will be remitted to the successful proposer after the Lease-Purchase Agreement is executed and may be applied to the security deposit due under the lease.

In order to be considered for selection, proposers shall submit a complete response to this Request for Proposals. **ONE ORIGINAL AND FIVE COPIES** of the Proposal Package, each with the Non-Price and Rent Proposal, must be submitted to the Purchasing Agent.

All proposals will be received by the Purchasing Department, **in the Office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740.**

**Proposals will be received:**

**P.M. Eastern Time**

A proposer may correct, modify, or withdraw a proposal by written notice received by the Purchasing Agent prior to the time and date set for the proposal opening. Proposal modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_." Each modification must be numbered in sequence, and must reference the original Request for Proposals. No proposal may be withdrawn or the rent proposal changed subsequent to the opening of the proposals for a period of one hundred twenty (120) days after the date of the proposal opening, excluding Saturdays, Sundays and legal holidays.

After the proposal opening, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the City or fair competition. Minor informalities may be waived, or the proposer will be allowed to correct them. If a mistake and the intended correct proposal are clearly evident on the face of the proposal document, the mistake will be corrected to reflect the intended correct proposal, and the proposer will be notified of the correction in writing; the proposer may not withdraw the proposal. A proposer may withdraw a proposal if a mistake is clearly evident on the face of the proposal document, but the intended correct proposal is not similarly evident.

A proposal must be signed as follows: (1) if the proposer is an individual, by her/him personally; (2) if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and (3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

If the proposal is being submitted by an entity other than an individual, partnership or corporation, the proposal must include written evidence of the proposer's authority from the entity to submit the proposal in the form of legally binding documentation.

To be eligible for consideration, proposers must submit a completed Proposal Packet including all of the following documents, except as may otherwise be specifically noted:

- **City of New Bedford Rent Proposal Form:** Proposals must include a completed Rent Proposal Form for the Property, (**Attachment A** hereto).

- **Certificate of Tax Compliance:** The proposal shall include either the individual or corporate or other legal entity Certificate of Tax Compliance Form (**Attachment B** or **Attachment C** hereto), demonstrating payment of all Massachusetts state taxes, etc.
- **Disclosure Statement of Beneficial Interest:** The Proposal Package must include a completed Disclosure Statement of Beneficial Interest, as required by MGL, Chapter 7C, Section 38 (**Attachment D** hereto).
- **Certificate of Non-Collusion:** The Proposal Package must include a completed Certificate of Non-Collusion (**Attachment E** hereto).
- **Corporate Authorization:** if a corporation submits a proposal, the Proposal Package must include an executed Vote of Corporation Authorizing Execution of Corporate Agreements (**Attachment "F"** hereto).
- **Non-Conviction Affidavit Re: Arson:** An executed Affidavit of Non-Conviction of Crimes Related to Arson (**Attachment "G"** hereto).
- **Acknowledgment:** An executed Acknowledgment of Solicitation Requirements, (**Attachment "H"** hereto).
- **Tax Status and History Disclosure:** A statement of proposer's property tax history, (**Attachment "I"** hereto), which will be reviewed by the City of New Bedford. A proposer cannot be delinquent in the payment of taxes on any property in the City of New Bedford or must be current in a pre-existing repayment agreement with the City of New Bedford Treasurer's Office. Proposers must also state if the City of New Bedford has ever foreclosed on property they have ever owned and describe the circumstances that resulted in the foreclosure(s).
- **Health and Building Codes Violations Disclosure:** A statement of proposer's history of violations of the Health Code and Building Code, (**Attachment "J"** hereto), which will be reviewed by the City of New Bedford. Proposers must also state if they currently own any properties on which there are outstanding Health or Building Code violations.
- **Authorization to Submit Proposal:** If an individual is submitting the proposal, that individual must sign it. If the proposal is being submitted on behalf of an entity, the proposal must include written evidence of the proposer's authority to submit the proposal in the form of legally binding documentation.

### **3.4 Questions Procedure**

The Purchasing Agent will accept questions regarding this RFP between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday. **Questions must be submitted in writing** to the office of the Purchasing Agent, Room 208, City Hall, 133 William Street, New Bedford, Massachusetts, 02740, **via hand-delivery, mail or fax no later than** [\_\_\_\_\_]. A written Addendum to this RFP responding to the questions will be mailed or faxed to all parties on record as having picked up the RFP. Prospective proposers must acknowledge receipt of all addenda within their responses to this solicitation.

**3.5 Disclaimer**

The City assumes no responsibility and no liability for costs incurred relevant to the preparation of responses to this RFP. The City shall bear no responsibility or liability due to copies, revisions, addenda or other transmittals, however described, lost in mailing or not delivered to a prospective proposer under any circumstances. By virtue of submitting a proposal, each proposer acknowledges that all statements in this RFP regarding the condition or value of the Property, or any investigation described as being conducted on the Property, are for the purpose of illustration only and are not intended to be relied upon for any reason. Further, by virtue of submitting a proposal, each proposer acknowledges that it has not relied upon any information contained herein in the preparation of its proposal, and that it has relied solely upon its own investigations and due diligence in all matters relating to this RFP and in its proposal preparation.

**3.6 Rule for Award**

Subject to the awarding authority's right to reject any and all bids and to select a proposal other than that containing the highest base rent for the Property (provided that the minimum base rent provision is met or waived by the City), and subject to all rights of the awarding authority under Massachusetts General Laws and the provisions of this RFP, the awarding authority will select, in its discretion and best judgment, and in the best interest of the City of New Bedford, the most advantageous proposal from a proposer, taking into consideration the rent and all other evaluation criteria set forth in the RFP.

**3.7 Schedule**

Advertise Solicitation	
Solicitation Available	
Final date for submission of questions	
Responses Due	
Distribute Proposals to Committee	
Recommendation to Treasurer	
Award	





## **Lease of Former Greene Elementary School Proposed Purchase and Sale Terms, Property Inspections**

### **4.1 Proposed Lease-Purchase and Sale Terms**

The lease-purchase of the Property shall be awarded to the proposer selected in accordance with Section 3 above. The City shall send a letter to the successful proposer, informing the proposer of such award.

The City and the selected proposer (referred to as the "lessee") shall, within thirty (30) days of date of the award, enter into a lease purchase agreement **materially on the same terms as those set forth in** the Lease-Purchase Agreement attached hereto as Attachment I and incorporated herein (the "Agreement"). In the event the successful proposer fails to enter into the Agreement with the City within said thirty (30)-day period, or such later time as the City may agree to, in its sole discretion, the City may rescind the award and retain any proposal security as liquidated damages.

Unless the prospective lessee and the City otherwise agree, it is anticipated that the Lease-Purchase Agreement for the Property will include, without limitation, the following terms:

- The term of the Agreement shall commence at the expiration of the Diligence Period (defined below) and terminate twenty-five (25) years therefrom as set forth above.
- A security deposit in the amount of two (2) months of base rent shall be made upon execution of the Agreement. Base rent will be paid to the City during the 25-year course of the lease in equal monthly installments. The closing date and time may be extended by mutual agreement of the parties.
- ***All rent payments made by lessee under the Agreement are non-refundable.*** In the event that the Agreement is terminated for any reason other than a default by the City, the lessee's option to purchase the Property shall also terminate, without recourse, and without any payment being made by the City, it being expressly understood that any payments made by the lessee under the Agreement shall constitute a charge for the lessee's use and occupancy of the Property, and not constitute a partial payment of the purchase price or grant any equity in the Property to the lessee.
- The Property will be delivered "AS-IS, WHERE-IS" with no warranties or representations of any kind.
- The City shall deliver a good and sufficient quitclaim deed of the Property running to the lessee, which deed will convey good and clear record and marketable title to the Property, subject to encumbrances on record as of the execution of the Agreement and such other encumbrances as are granted with the consent of the lessee, and also to utility easements.
- The sale of the Property shall be subject to City Council approval which shall have been obtained prior to execution of the Lease-Purchase Agreement.

- The lessee is granted the opportunity to conduct such inspections of the Property as it deems necessary or appropriate to satisfy itself of the condition of the Property, as set forth more particularly in Section 4.2 below. If the lessee does not terminate the Agreement prior to the expiration of the Diligence Period, the lessee shall be deemed to have conducted to its satisfaction a complete and thorough inspection, analysis and evaluation of the Property, including but not limited to environmental issues, and satisfied itself with the results of such inspections. The lessee will accept the Property at the closing in an "AS IS" condition and with "ALL FAULTS" without any warranty or representation by the City whatsoever relating to the Property, and the lessee shall be deemed to have acknowledged and confirmed that lessee has not relied on any representation or inducement which was or may have been made or implied by City or any other party acting on behalf of City with respect to the Property or any circumstances or conditions affecting the Property. The lessee further agrees that, to the extent that the City provided the lessee with any information from any inspection, engineering or environmental reports or copies of any documents relating to the Property, the City made no representations or warranties with respect to the accuracy or completeness of same or otherwise concerning the contents of such reports or documents relating to the Property.
- If the lessee does not terminate the Agreement prior to the expiration of the Diligence Period, the lessee, for itself and its successors and assigns, shall release the City and its officers, agents and employees, successors and assigns from any and all claims, demands, obligations, costs, loss or damage, causes of action, legal or administrative proceedings, liabilities, penalties, fines, liens, judgments, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising out of or in any way connected with the condition of the Property, including without limitation, the environmental and sub-surface condition of the Property. The lessee agrees that it shall not commence, aid or support in any way, seek contribution from and/or prosecute against the City, its officers, directors, agents and employees and its and their respective successors and assigns, any action or other proceeding based upon any claims covered in this section, and shall defend and indemnify the City from any and all claims related to the environmental condition of the Property. The lessee, on behalf of itself, its members and their respective successors and assigns, expressly waives any rights or benefits available to it with respect to the above release under any provision of applicable law which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. Lessee acknowledges that it fully understands the foregoing release, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown described herein. The provisions of the foregoing release sections shall survive the closing (and be included in the deed to the Property) or the termination of the Agreement.
- The recitation of the foregoing proposed terms does not constitute an offer to lease or sell nor does it constitute a lease or purchase and sale agreement.
- Notwithstanding anything herein to the contrary, the City reserves the right, in its sole discretion, to select finalists to submit and negotiate a more fully-developed response, to negotiate with one or more proposers, and/or negotiate and lease the Property on terms that are not materially different from those set forth herein. The City also reserves the right, at any time and to waive strict compliance with terms and conditions of this RFP or to entertain reasonable modifications

or additions to selected proposals provided the same are not materially different from the terms set forth herein.

#### **4.2 Site Inspections**

The lessee shall have the right to conduct or cause to be conducted such surveys, investigations, inspections and studies of the Property as the lessee deems necessary or desirable (the "Investigations"), commencing on the date of that the Agreement is fully executed (the "Execution Date") and ending at 5:00 p.m. thirty (30) days thereafter (the "Diligence Period"), at the lessee's sole cost and expense, provided that lessee and with at least with prior advance written notice to the City. Notwithstanding anything to the contrary contained above, with respect to the performance of any environmental testing or investigations of the Property, or any other investigation of the Property that is physically invasive, the lessee shall first obtain the prior written approval of City as to the identity of the company or persons who shall perform such testing or investigation and the proposed scope of such testing or investigation, which approval shall not be unreasonably withheld by City. The lessee shall furnish the City with any and all information resulting from environmental testing or investigation, including draft reports prepared by consultants and laboratory data of samples.

The lessee shall assume all risks associated with the conduct of the Investigations and shall protect, defend, indemnify and hold harmless the City and its agents of, from and against any and all costs, losses, claims, demands, damages, liabilities, expenses and other obligations (including, without limitation, attorneys' fees and court costs) arising from, out of or in connection with or otherwise relating to, the entry by and the activities, studies and tests performed by the proposer or anyone or more of its employees, agents, contractors, subcontractors, consultants or other representatives in or upon the Property except as may be caused by the gross negligence of the City. The lessee shall provide to the City, and to cause each of its agents, contractors, subcontractors, consultants and other representatives who enter upon the Property to provide to City, prior to any such entry, evidence of insurance in the amounts of 1 Million/2 Million combined limits general liability and with companies reasonably acceptable to City and naming City as an additional insured, covering the activities to be conducted by the lessee and/or its employees, agents, contractors, subcontractors, consultants and other representatives.

In the event that the lessee is not satisfied with the condition of the Property, the lessee shall have the right to terminate the Agreement, without recourse. In such event, the lessee shall restore the Property to its condition prior to the lessee's entry and repair any damage caused to the Property by the lessee and/or others acting by and through the lessee.

The terms of the lessee's inspection of the Property is set forth in the Site Access Agreement attached hereto as Exhibit K and incorporated herein.

In the event the need arises to notify under applicable laws any federal, state or local public agencies of any environmental conditions at the Property, as a result of the lessee's investigations, the lessee shall immediately notify City and shall agree that the City, not the lessee nor the lessee's employees, agents, contractors, subcontractors, consultants, attorneys, appraisers or other representatives, shall make such disclosure as City deems appropriate, unless such disclosure is required by law to be made by the lessee in which instance the lessee may make such disclosure and the lessee shall immediately notify the City in writing thereof.

**AWARDING AUTHORITY: CITY OF NEW BEDFORD**  
By: City Council Property Committee or its designee  
133 William Street  
New Bedford, MA 02740



## Lease Purchase of Former Greene Elementary School Proposal Packet Checklist and Attachments

Proposers are required to submit one (1) original and five (5) copies of the Proposal Package. Proposers are cautioned to review their Proposal Package prior to sealing and submitting it. The following checklist should be followed when assembling the Proposal Package:

1. Submission envelope must have name and address of Proposer and be marked, "Proposal for Lease-Purchase of Greene Elementary School."
2. \$5,000.00 Proposal Deposit included.
3. Non-Price Proposal.
4. Rent Proposal submitted on Attachment "A" in a separate sealed envelope
5. One original and 5 copies each of the Non-Price and Rent Proposals. (Total 6 of each)
6. Acknowledge all Addenda.
7. Sign Proposal.
8. If not an individual or corporation, include authorization from entity to submit Proposal in the form of legally binding documentation.

### EXECUTE AND INCLUDE

9. ATTACHMENT A -- Rent Proposal Form
10. ATTACHMENT B -- Commonwealth of Massachusetts Individual Certificate of Tax Compliance, or
11. ATTACHMENT C -- Commonwealth of Massachusetts Corporate or other Legal Entity Certificate of Tax Compliance
12. ATTACHMENT D -- Beneficial Interest Disclosure Statement
13. ATTACHMENT E -- Certificate of Non-Collusion
14. ATTACHMENT F -- Vote of Corporation Authorizing Execution of Corporate Documents
15. ATTACHMENT G -- Affidavit of Non-Conviction of Crimes Related to Arson
16. ATTACHMENT H -- Acknowledgement of Solicitation Requirements
17. ATTACHMENT I -- Tax Status and History Disclosure
18. ATTACHMENT J -- Health and Building Codes Violation Disclosure
19. ATTACHMENT K -- Site Access Agreement – is included for informational purposes only and is not to be included in the Proposal Packet.

\_\_\_ 20. ATTACHMENT L -- Lease Purchase Agreement -- is included for informational purposes only and is not to be included in the Proposal Packet.

**Attachment "A"**  
**RENT PROPOSAL FORM**  
**CITY OF NEW BEDFORD**  
**32 Madison Street – Former Greene Elementary School**

The undersigned hereby submits the attached proposal for the lease and purchase of property from the City of New Bedford in response to the Request for Proposals for the Lease-Purchase of Former Greene Elementary School:

Proposer's Name:

Owner's Name (if different from proposer):

Owner Entity and State of Organization:

Proposer's Address:

Proposer's Telephone:

Proposer's E-Mail:

Proposer's Fax Number:

Parcel Location: Street Address or Location of Property:

Proposed Base Rent:

Proposed Annual Escalations:

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Date

Name (Print): \_\_\_\_\_

**Attachment "B"**  
**COMMONWEALTH OF MASSACHUSETTS**  
**INDIVIDUAL CERTIFICATE OF TAX COMPLIANCE**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_  
Name of Company Officer (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Attachment "C"**  
**COMMONWEALTH OF MASSACHUSETTS CORPORATE**  
**OR OTHER LEGAL ENTITY CERTIFICATE OF TAX COMPLIANCE**

Pursuant to the requirements of G.L. c. 62C, s. 49A, the undersigned does hereby state the following:

I, \_\_\_\_\_, as the \_\_\_\_\_ of  
\_\_\_\_\_, whose principal place of business is located  
at \_\_\_\_\_ do hereby certify under the

penalties of perjury that, to the best of my knowledge and belief, the above named corporation/firm  
is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and  
contractors, and withholding and remitting child support.

Federal Identification

Number: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Name of Company Officer (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**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 Asset Management, as required by M.G.L. c. 7C, §38, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

For acquisition or disposition of real property by the City of New Bedford, Massachusetts, the undersigned does hereby state, for the purposes of disclosure, pursuant to Massachusetts General Laws, Chapter 7C, Section 38, of a transaction relating to real property, as follows:

1. Public agency involved in this transaction: City of New Bedford
2. Complete legal description of the property: City of New Bedford Assessor's Maps Plat 42, Lot 1.
3. Type of transaction:  Sale  Lease or rental for \_\_\_\_\_ (term):
2. 4. Seller (s) or Lessor (s): City of New Bedford

Purchaser(s) or Lessee(s): \_\_\_\_\_

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 stockholders must also be listed except that, if the stock of the corporation is listed 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.*

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Name	Title or Position
_____	_____
_____	_____

7. The individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1 must sign this section. If this form is signed on behalf of a corporation or other legal entity, a duly authorized officer of that corporation or legal entity must sign it. The undersigned acknowledges that any changes or additions to items 3 and or 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 within thirty (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: \_\_\_\_\_

**Attachment "E"**  
**CERTIFICATE OF NON-COLLUSION**

The undersigned certified under penalties of perjury that this 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 any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

\_\_\_\_\_  
Signature of individual submitting bid

\_\_\_\_\_  
Name of business/organization

\_\_\_\_\_  
Date

**ATTACHMENT "F"**  
**VOTE OF CORPORATION AUTHORIZING**  
**EXECUTION OF CORPORATE AGREEMENTS**

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, and Contracts; 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)

\_\_\_\_\_  
Signature (Affix Corporate Seal)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**ATTACHMENT "G"**  
**AFFIDAVIT OF NON-CONVICTION OF CRIMES RELATED TO ARSON**

I, \_\_\_\_\_, hereby depose and say:

I, \_\_\_\_\_, the Purchaser/Lessee of the Property from the City of New Bedford identified as the 247 Smith Street, shown as Lot 1 on Assessor's Map 42, hereby state that neither the Purchaser/Lessee nor any person who would gain equity in the property as a result of the conveyance has ever been convicted of a crime involving the willful and malicious setting of a fire or of a crime involving the aiding, counseling or procuring of a willful and malicious setting of a fire, or of a crime involving the fraudulent filing of a claim of fire insurance.

Signed and sworn to under the pains and penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed or typed name

\_\_\_\_\_  
Company name

**ATTACHMENT “H”**  
**ACKNOWLEDGMENT OF SOLICITATION REQUIREMENTS**

As evidenced by the signature of the Proposer’s authorized signatory below, the Proposer certifies that it has read and understands the Request for Proposals for Lease-Purchase of the Former Greene Elementary School and understands the requirements of the solicitation.

\_\_\_\_\_  
Proposer’s Authorized Signatory

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**ATTACHMENT "I"**  
**TAX STATUS AND HISTORY DISCLOSURE\***

The undersigned states that the Proposer, \_\_\_\_\_, is not delinquent in the payment of taxes on any property in the City of New Bedford or is current in a pre-existing repayment agreement with the City of New Bedford Treasurer's Office. I further state that the City of New Bedford has never foreclosed on property owned by the Proposer.

Company Name: \_\_\_\_\_

BY: \_\_\_\_\_  
Name of Company Officer (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\*If Proposer is delinquent in the payment of taxes on any property in the City of New Bedford, or is not current in a pre-existing repayment agreement with the City of New Bedford Treasurer's Office, or the City of New Bedford has foreclosed on property owned by the Proposer, state the circumstances of same below. (Attach additional sheets, if necessary.)

**ATTACHMENT "J"**  
**HEALTH AND BUILDING CODES VIOLATIONS DISCLOSURE\***

The undersigned states that the Proposer, \_\_\_\_\_, has never been cited by the City of New Bedford, and has never owned any property in the City of New Bedford that has been cited, for a violation of the Health Code or Building Code. I further state that the Proposer does not currently own any property in the City of New Bedford on which there are outstanding Health or Building Code violations.

Company Name: \_\_\_\_\_

BY: \_\_\_\_\_  
Name of Company Officer (printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\*If Proposer has been cited by the City of New Bedford, or has owned any property in the City of New Bedford that has been cited, for a violation of the Health Code or Building Code, or currently owns any property in the City of New Bedford on which there are outstanding Health or Building Code violations, state the circumstances of same below. (Attach additional sheets, if necessary.)



**Attachment "K"**  
**SITE ACCESS AGREEMENT**

This Site Access Agreement (this "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_ 2018, by and between \_\_\_\_\_ ("Lessee"), having an address at \_\_\_\_\_, and the City of New Bedford (the "City").

WHEREAS, the City is the owner of Lot 1 on New Bedford Assessor's Map 42 (the "Property");

WHEREAS, the City and Lessee have entered into a Lease-Purchase Agreement (the "Lease") whereby the Proposer will lease the Property for twenty-five (25) years and have the option to purchase the Property at the expiration of the Lease;

WHEREAS, Lessee seeks access to the Property to conduct such inspections and investigations to satisfy itself as to the condition of the Property and its suitability for Lessee's use;

NOW, THEREFORE, in order to enable Lessee to conduct such investigations, the City agrees to provide Lessee access to the Property, subject to the following terms and conditions:

1. Lessee shall have the right to enter the Property for the purpose of conducting such surveys, investigations, inspections and studies of the Property as Lessee deems necessary or desirable (the "Inspections"), which right shall commence on \_\_\_\_\_, 2019, the date on which the parties execute the Lease, and terminate at 5:00 p.m. on \_\_\_\_\_, 2019, which is thirty (30) days thereafter (or such earlier time at which Lessee informs the City in writing that it has completed its Inspections, the "Diligence Period"), at Lessee's sole cost and expense, provided that Lessee shall give the City at least one business day's prior written notice of the same, Notwithstanding anything to the contrary, with respect to the performance of any environmental testing or investigations of the Property, or any other investigation of the Property that is physically invasive, Lessee shall first obtain the prior written approval of City as to the identity of the company or persons who shall perform such testing or investigation and the proposed scope of such testing or investigation, which approval shall not be unreasonably withheld, at least two business days prior to such testing. Lessee agrees to furnish the City with any and all information resulting from the Inspections, including environmental testing or investigations, including draft reports prepared by consultants and laboratory data of samples.

2. Lessee accepts the Property in its "as is" condition for the purpose of this Agreement, and acknowledges and agrees that the City has made no representations or warranties regarding the condition or fitness of the Property or its suitability for Lessee's use. Without limiting the foregoing, Lessee acknowledges that the building located on the Property may be of questionable structural integrity and assumes all responsibilities and risks to Lessee and its agents, employees, representatives, contractors, consultants, invitees and any one acting by or through the Lessee (with Lessee, the "Lessee Parties"), for any and all activities on the Property. Lessee shall enter the

Property at its own risk, and the City, its agents, employees, representatives, officers, agents, board members and attorneys shall not be liable to Lessee for any injury or death to persons entering the Property pursuant to this Agreement, or loss or damage to vehicles, equipment or other personal property of any nature whatsoever of Lessee, or of anyone claiming by or through Licensee, that are brought upon the Property pursuant to this Agreement, except if such injury, death, loss or damages is caused directly by the gross negligence of the City or its employees, agents or contractors.

3. During the exercise of the rights hereby granted, Lessee shall at all times conduct itself so as not to unreasonably interfere with the use of the Property by the City and others entitled thereto, and observe and obey directives of the City and its duly designated representatives, as well as all applicable laws, statutes, ordinances, regulations and permitting or licensing requirements, including without limitation, environmental, health and safety statutes and regulations currently in effect. Upon the completion of the Inspections, Lessee shall restore the Property to its prior condition and repair any and all damage to the Property, including any improvements thereon, resulting from any act, omission or negligence of Lessee and/or the other Lessee Parties.

4. Lessee shall not make any changes or other alterations to the Property without the City's prior written consent, which may be withheld in its sole discretion. Lessee shall procure all necessary permits before undertaking the Inspections, and cause the Inspections to be performed in an expeditious manner.

5. Lessee shall not permit any mechanics' liens, or similar liens, to remain upon the Property for labor and material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed at the direction of Lessee and Lessee shall cause any such lien to be released of record forthwith without cost to the City. All laborers and materialmen furnishing labor and materials for the Inspections shall release the City from any and all liability.

6. Lessee may bring such vehicles and other equipment upon the Property only as necessary to undertake the Inspections, but Lessee shall not store any vehicles, equipment or materials thereon without the City's prior written consent. Lessee shall be solely responsible for the security of its equipment, materials, and the other personal property, it being agreed that the City shall have no liability for any damage to or loss of the foregoing.

7. Lessee shall promptly notify the City of any condition identified during the performance of due diligence that requires notification to the Massachusetts Department of Environmental Protection in accordance with GL c. 21E and/or the Massachusetts Contingency Plan. In the event the need arises to notify under applicable laws any federal, state or local public agencies of any environmental conditions at the Property as a result of Lessee's investigations, Lessee shall immediately notify City and shall agree that the City, not Lessee nor the other Lessee Parties, shall make such disclosure as City deems appropriate, unless such disclosure is required by law to be made by Lessee in which instance Lessee may make such disclosure and shall immediately notify the City in writing thereof.

8. Lessee, its subcontractors, agents or contractors shall carry and maintain General Liability Insurance for bodily injury and property damage in the amount of \$1,000,000 per occurrence; Bodily Injury Liability: \$500,000 per occurrence; and Property Damage Liability or a combined single limit of \$2,000,000 annual aggregate limit. Prior to entering the Property and at

such other times as the City may require, Lessee shall provide the City with a certificate of insurance naming the City of New Bedford as an "additional insured" on its all liability insurance policies and complying with the terms hereof. Lessee shall carry and maintain, and shall cause its subcontractors, agents or contractors to carry and maintain, worker's compensation insurance as required by law. Further, Lessee or the party or parties performing due diligence on behalf of the Lessee shall provide the City with proof of Environmental Insurance, in the amount of \$1,000,000 combined single limit.

9. Lessee shall assume all risks associated with entry onto the Property and/or the conduct of the Investigations and shall protect, defend, indemnify and hold harmless the City and its agents of, from and against any and all costs, losses, claims, demands, damages, liabilities, expenses and other obligations (including, without limitation, attorneys' fees and court costs) arising from, out of or in connection with or otherwise relating to, the entry by and the activities, studies and tests performed by Lessee or any of the other Lessee Parties in or upon the Property except as may be caused directly by the gross negligence of the City.

10. Prior to entering upon the Property, Lessee shall provide to the City, and shall cause each of the other Lessee Parties who enter upon the Property to provide to City, evidence of general liability The insurance shall be provided by companies reasonably acceptable to City and shall name the City as an additional insured,.

11. In the event that Lessee is not satisfied with the condition of the Property, Lessee shall have the right to terminate the Lease, without recourse, by giving written notice thereof and received by the City on or 5:00 p.m. on \_\_\_\_\_, 2019. In such event, Lessee shall restore the Property to its condition prior to Lessee's entry and repair any damage caused to the Property by Lessee or the other Lessee Parties, which obligation shall survive the termination of this Agreement.

12. If Lessee does not terminate the Agreement prior to the expiration of the Diligence Period, Lessee shall be deemed to have conducted to its satisfaction a complete and thorough inspection, analysis and evaluation of the Property, including but not limited to environmental issues, and satisfied itself with the results of such inspections. Lessee will accept the Property in an "AS IS" condition and with "ALL FAULTS" without any warranty or representation by the City whatsoever relating to the Property.

13. All notices or other submissions required or appropriate under this Agreement shall be sent by first class mail, facsimile, nationally recognized overnight delivery service or certified mail, return receipt requested. Such notices or submissions shall be sent, unless written notice has been given of a change by either Party, to the following persons:

CITY OF NEW BEDFORD:  
Susan Bruce, Purchasing Agent  
City of New Bedford  
133 William St.  
New Bedford, MA 02740

PROPOSER:

Copy:

Mikaela McDermott  
Office of the City Solicitor

133 William St.  
New Bedford, MA 02740

14. This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as a sealed instrument as of the dates set forth below their respective signatures.

CITY OF NEW BEDFORD

LESSEE:

By: \_\_\_\_\_  
Jon Mitchell, Mayor

By: \_\_\_\_\_

DATE: \_\_\_\_\_

**Attachment "L"**  
**LEASE-PURCHASE AGREEMENT**  
**FORMER GREENE ELEMENTARY SCHOOL**

THIS LEASE-PURCHASE AGREEMENT (this "Lease") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF NEW BEDFORD (the "City"), a Massachusetts municipality duly chartered under Massachusetts General Laws Chapter 43 § 1, et seq., acting by and through its City Council and Mayor, and \_\_\_\_\_ ("Lessee"), a \_\_\_\_\_. The City and Lessee are hereinafter referred to together as the "Parties."

WHEREAS, the City owns a parcel of land located at 32 Madison Street in New Bedford, Bristol County, at the southeast corner of Purchase and Madison Street, and identified on City of New Bedford Assessors Plat 42 as Lot 1, containing 17,310 square feet (the "Land"), with the former Thomas A. Greene Elementary School thereon (the "Building" and, with the Land, the "Property") thereon;

WHEREAS, the City issued a Request for Proposals (the "RFP"), soliciting proposers to lease the Property under a long-term lease with an option to be exercised by Lessee to purchase the Property at the expiration of said lease, and Lessee submitted a proposal (the "Proposal") in response to the RFP, proposing to lease the Property for educational purposes; and

WHEREAS, the City selected Lessee as the successful proposer and is amenable to leasing the Property to Lessee on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1 - PREMISES**

**1.1 THE PREMISES.**

The City leases to Lessee, and Lessee leases from the City, the Property, including, without limitation, the Building, all walkways, pathways, parking areas and access ways serving the Premises, together with any and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Property (collectively, the "Premises").

**1.2 CONDITION OF PREMISES.**

The Premises are delivered to Lessee, and Lessee accepts the Premises, in their present condition, "AS IS," it being agreed that Lessee has had an opportunity to examine and inspect the Premises, and accepts the Premises without any representation or warranty of any kind or nature, express or implied, in fact or by law, on the part of the City and without recourse to the City. The City shall have no obligation to do any work on or make any alterations and/or improvements to or with respect to the Premises or the condition thereof, except as otherwise expressly provided for in this Agreement.

### 1.3 CITY'S ACCESS.

The City and/or its agents may, at reasonable times and without interfering with Lessee's operations, enter the Premises from time to time to inspect the Premises, to undertake any work required under applicable laws, rules, regulations, by-laws, and requirements of public authorities, to abate any violations of the terms hereof, and for the purpose of exercising any other rights reserved to the City by this Lease, provided such do not interfere unreasonably with Lessee's use and quiet enjoyment of the Premises. The City shall give Lessee a minimum of twenty-four (24) hours' notice of such visits, which may be oral notice, provided however that the City may enter the Premises at any hour and without prior notice in the case of an emergency threatening harm to the Premises or the safety of persons therein, in which case notice shall be given as soon as practicable.

## ARTICLE II - TERM OF LEASE

### 2.1 TERM OF LEASE

This Lease shall be for a twenty-five (25)-year term, commencing on July 1, 2019 (the "Commencement Date") and expiring on June 30, 2047 (the "Term"), unless terminated sooner in accordance with the terms of this Lease. A "Lease Year" shall be each successive twelve (12) month period commencing on the Commencement Date and every anniversary thereof.

## ARTICLE III - RENT

### 3.1 BASE RENT

Lessee agrees to pay the City base rent in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per Lease Year during the Term of this Lease, to be paid in equal monthly installments of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) each on the first day of each month, [which amount shall be increased annually over the prior Lease Year's base rent by three percent (3 %) (as adjusted annually,) "Base Rent"]. If the Commencement Date shall be on any day other than the first day of a calendar month, Base Rent and other charges for such month shall be pro-rated on a per diem basis.

### 3.2 ADDITIONAL RENT

Commencing on the Commencement Date, Lessee shall pay any and all general and real estate taxes, personal property taxes, special assessments, duties, fees or charges, betterments, and other charges, whether general or special, ordinary or extraordinary, of any and every kind and nature, including governmental or other impositions, charged, levied, assessed, or imposed, whether by federal, state, local, or any other public authority during the Term hereof, that are attributable to the Premises, Lessee's use and/or operation thereof, and/or Lessee's personal property located on the Premises, including the Utility Charges (defined below) (including any other sums to be paid by Lessee hereunder, "Additional Rent"). Lessee shall pay the Additional Rent directly to the charging authority, as provided below. The Base Rent and the Additional Rent are referred to, together, as the "Rent."

### 3.3 GENERAL RENT PROVISIONS

Rent shall be payable by Lessee to the City monthly in advance on the first day of each month, without counterclaim, notice, demand, abatement or offset. All Rent and other payments required to be made by Lessee to the City under this Lease shall be paid by check made payable to the "City of New Bedford" and delivered to the City at the address set forth above, or at such other place as the City may from time to time direct by written notice to Lessee, provided, however, that any Additional Rent, including any Utility Charges, that are charged directly to Lessee shall be paid by Lessee directly to the authority, agency, party or entity charging such amounts, so long as Lessee makes such payment on or before the date such payment is due, and provides the City with proof of payment promptly upon request.

#### 3.4 INTEREST

All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by the City at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor.

#### 3.5 TRIPLE NET LEASE

Lessee acknowledges and agrees that this is a triple net lease, and that all costs, expenses and obligations of any kind relating to the Premises, including without limitation all construction, alterations, maintenance, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due during the Term hereof, shall be paid by Lessee at Lessee's sole cost and expense. All payments of Rent shall be absolutely net to the City, so that this Lease shall yield to the City the Base Rent herein specified each year during the Term of this Agreement free of any taxes, assessments, charges, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. The City shall not be expected or required to pay any such charge, assessment or imposition, or furnish any services to the Premises or be under any obligation or liability hereunder.

#### 3.6 RENT AS OCCUPANCY CHARGES

Lessee expressly acknowledges and agrees that the Base Rent to be paid under this Lease constitutes compensation owed to the City for the use and/or occupancy of the Premises under this Lease, and does not constitute a down-payment or a partial payment for the purchase of the Premises. Further, any other sums due to be paid by Lessee under this Lease are charges related to Lessee's use of the Premises. Neither the Base Rent payments nor any other payments made under this Lease shall establish any equity in the Premises, and Lessee shall not accrue or be entitled to any equity in the Premises by virtue of any payments due and/or made under this Lease. All Rent payments under this Lease are non-refundable. In the event that this Lease is terminated for any reason other than a default by the City, including, without limitation, under Articles XI and/or XII of this Lease, the Lessee's Option to purchase the Premises shall also terminate, without recourse and without any sums being owed by the City to Lessee.

### **ARTICLE IV – UTILITIES; SECURITY DEPOSIT**

#### 4.1 INSTALLATION OF UTILITIES

Lessee acknowledges that the City shall have no obligation under this Lease to provide or pay for any facilities, utilities, or services of any kind to the Premises whatsoever during the Term of this Lease. Lessee shall be responsible for providing and paying for any additional utilities and/or equipment as Lessee may need for its use of the Premises, and installing, maintaining, repairing, and/or replacing the same. Before Lessee installs any additional utilities and/or makes any capital or structural changes to the Premises to accommodate any utilities, Lessee shall obtain the prior written consent of the City and shall install the same in conformity with plans and specifications provided by Lessee and approved by the City, said consent not to be unreasonably withheld, and all costs incurred in connection therewith, including installation, maintenance and repairs of the same, shall be Lessee's sole obligation.

#### **4.2 UTILITY CHARGES.**

Lessee shall pay or shall cause to be paid, as Additional Rent, directly to the utility provider, all charges, fees and other payments to be made, however called, for any and all utility services furnished to or used at the Premises, including, without limitation, water, sewer, electricity, gas, heat, steam, air conditioning, ventilating, lighting systems, telephone, internet and other utilities and/or services ("Utility Charges").

#### **4.3 LESSEE NOT TO EXCEED CAPACITY OF FEEDERS OR WIRING**

Lessee covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Premises or the wiring installations therein.

#### **4.4 SECURITY DEPOSIT**

Lessee has deposited with the City the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as security for any failure by Lessee to comply with the terms of this Lease, including, without limitation, for any damage caused to the Premises and/or Lessee's failure to restore the Premises. In accordance with G.L. c. 186, § 15B, such deposit received by the City shall be held in a separate, interest-bearing account in a bank, located within the Commonwealth under such terms as will place such deposit beyond the claim of creditors of the City. Such deposit shall be returned to Lessee, with such amount of interest as has been received from the bank where the deposit has been held, if any, and less any set off for damages to the Premises upon the termination of this Lease.

### **ARTICLE V - INSTALLATIONS, ALTERATIONS AND ADDITIONS**

#### **5.1 LESSEE IMPROVEMENTS**

Lessee shall not make any alterations, improvements, additions, replacements, relocations or other material changes to the Premises and/or the improvements thereon (the "Alterations") without the City's prior written consent, which shall not be unreasonably withheld.

#### **5.2 APPROVED PLANS AND SPECIFICATIONS**

Prior to undertaking any Alterations, Lessee shall, at its cost, prepare and deliver to the City complete working drawings, plans and specifications detailing the location, size and specifications of the Alterations and such other items as the City may reasonably request, and specifically describe all



proposed Alterations and include a construction schedule, and obtain the City's approval of Lessee's plans for such Alterations at least forty-five (45) days to undertaking the same. Lessee agrees to address reasonable safety and aesthetics issues raised by the City. If the City fails to disapprove the plans within said forty-five (45) day period, said plans for the Alterations shall be deemed to be approved, provided that the deemed-approved provision is expressly set forth in the notice to the City. The plans and specifications, as approved by the City and or deemed approved, are referred to as the "Approved Plans". The review and approval by the City under this Lease shall be in addition to any other approvals required under all applicable federal, states and local laws, rules and regulations. Lessee agrees to reimburse the City for reasonable fees and costs incurred by the City in reviewing such Approved Plans and ensuring that all Alterations are made in material compliance with the Approved Plans, provided that the City submits to Lessee invoices showing such costs.

### 5.3 CONSTRUCTION COSTS

Except as provided otherwise, Lessee will pay all costs and expenses incurred in connection with the construction, maintenance and operation of the improvements or any other Alterations made or done to or at the Premises. Lessee shall repair, at its sole cost and expense, any damage caused to the Premises as a result of any act or omission of Lessee or its employees, agents, contractors, or invitees.

### 5.4 INSURANCE FOR ALTERATIONS.

Lessee shall have and maintain in force public liability and property insurance, builder's risk insurance covering the City and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits. All such policies shall comply with the provisions of Articles IX and X hereof.

### 5.5 COMPLIANCE WITH LAWS

Lessee shall procure all necessary permits before undertaking any Alterations on the Premises and shall cause all such work to be performed in a good and first-class workmanlike manner and in accordance with the requirements of insurers, employing new materials of good quality and shall defend, hold harmless, exonerate and indemnify the City from all injury, loss or damage to any person or property occasioned by such work. Lessee shall at all times comply with Massachusetts public bidding laws, if applicable, and all other laws, rules, orders and regulations of governmental authorities having jurisdiction thereof, in effect at the time of application for permits for such work, and orders, rules and regulations of any Board of Fire Underwriters, or any other body hereafter constituted exercising similar functions, and governing insurance rating bureaus. Lessee agrees to employ responsible contractors for such Alterations and shall cause such contractors to carry the insurance required under Article X and agrees to submit certificates evidencing such coverage to the City prior to the commencement of and during the continuance of any such work.

### 5.5 PERFORMANCE AND PAYMENT BONDS

Prior to the commencement of any Alterations, Lessee shall, at the City's request, provide the City with copies of a performance and a labor and materials payment bond provided by Lessee's contractor, in the amount of 100% of the value of the contract, ensuring the completion of the work

and payment for labor and materials, which bonds shall name Lessee and the City as co-obligees under said bond.

#### 5.6 LIENS AND ENCUMBRANCES

Lessee shall not permit any mechanic's liens, or similar liens to remain upon the Premises for labor and material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed at the direction of Lessee, and shall cause any such lien to be released of record without cost to the City within thirty (30) days after Lessee receives notice of filing of same. All materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter who contract with Lessee for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises are hereby charged with notice that they must look exclusively to Lessee to obtain payment for same. Lessee agrees that it will, on request from the City, comply with any and all reasonable requirements of the City with respect to the work performed or materials furnished by Lessee or its agents, contractors, and sub-contractors in the Premises.

#### 5.7 OWNERSHIP OF IMPROVEMENTS

The City shall retain ownership of the Building and any and all fixtures, machinery, equipment, personal property and/or other improvements on the Premises as of the Commencement Date. All Alterations and/or additions made by Lessee and fixtures installed by Lessee shall be owned by Lessee during the Term of this Lease, but will become the exclusive property of the City upon any earlier termination of this Lease, without any payment by the City therefor, except that, upon such termination, Lessee may remove from the Premises any other improvements made by Lessee that can be removed from the Premises without harm to the Premises and also any personal property of Lessee within the Premises. Lessee shall repair any damage caused by Lessee's removal and restore the Premises to the condition they are required to be maintained in hereunder, reasonable wear and tear excepted. At the expiration of the Lease, and the conveyance of the Premises by the City to Lessee, the City will also convey to Lessee, without any additional consideration, any and all fixtures and other improvements that were on the Premises as of the Commencement Date.

#### 5.8 INSPECTION OF IMPROVEMENTS

The City's representatives may enter upon the Premises from time to time on reasonable notice to Lessee for the purpose of inspecting any repairs, Alterations or other work being done on or to the Premises, and such entry shall not be construed to be a violation of Lessee's right to possession of the Premises. At final completion of any Alterations, the City shall have the right to inspect the work to determine material conformity with the Approved Plans and may direct Lessee to perform such additional work as may be necessary to materially conform to the same. Further, within sixty (60) days after final completion of the Alterations or the completion of other major improvements on or to the Premises, Lessee shall prepare at its expense and deliver to the City one complete, legible and reproducible full-sized set of as-built plans or their equivalent showing the Alterations and/or other improvements, as the case may be, and, if reasonably requested by the City, a certified survey plan.

### **ARTICLE VI - USE OF PREMISES**

## 6.1 PERMITTED USES

Lessee agrees that the Premises shall be used and occupied by Lessee only for the purpose of operating a day care, child care, pre-school, or other pre-elementary educational facility, and for no other purpose or purposes (the "Permitted Uses"). In no event shall the Premises be used for any purpose other than the Permitted Uses.

Lessee further agrees that the property shall not be used as a charter school, or any use relative thereto. This Restriction shall be included in the deed from the City as a Covenant which shall run with the property, in perpetuity.

## 6.2 COMPLIANCE WITH LAWS, RULES, REGULATIONS AND CODES.

Lessee acknowledges that it shall use and maintain the Premises in compliance with any and all federal, state or local law, regulations, codes and ordinances, including, but not limited to, those that relate to health, those of the Board of Fire Insurance Underwriters, and the Environmental Laws. Lessee shall not permit the Premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste.

"Environmental Laws" means, collectively, any federal, state, or local law, rule or regulation, code or by-law (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, G.L. c. 21E §§ 1 *et seq.*, and/or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Substances (as defined in Section 6.4 below) or providing for the protection, preservation or enhancement of the natural environment, and any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks.

## 6.3 COMPLIANCE WITH THE CITY'S REGULATIONS

Lessee shall comply and shall cause its employees, agents, and invitees to comply with such reasonable rules and regulations as the City shall from time to time establish governing the Premises and/or Lessee's use thereof, provided that the City gives Lessee reasonable advance notice thereof.

## 6.4 HAZARDOUS SUBSTANCES

Lessee shall not bring or permit to be brought or kept on the Premises, or release and/or otherwise dispose of any hazardous, toxic, inflammable, combustible or explosive fluid, material, chemical, or substance, including without limitation any item defined as hazardous pursuant Chapter 21E of the Massachusetts General Laws and federal and other state laws or any other materials that are included under or regulated by any Environmental Law, except for those ordinary and customary cleaning and property maintenance chemicals, fuels and petroleum products, pesticides and other

chemicals and compounds used in connection with property management and Lessee's Permitted Uses, provided the same are used in compliance with all Environmental Laws and other applicable laws or regulations ("Hazardous Substances").

Lessee shall indemnify, defend with counsel acceptable to the City and save harmless the City from and against any and all claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of any Environmental Law) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the City Parties arising from or related to the failure of the Lessee or any of the other Lessee Parties to comply with the Environmental Laws on and after the Commencement Date (and through the date on which this Lease has expired or terminated and Lessee has vacated and surrendered of the Premises as required hereunder), the release or threatened release of any Hazardous Materials on or from the Premises, and/or for contributing and/or exacerbating any environmental condition existing on the Premises prior to the Commencement Date.

Lessee shall indemnify, defend (with counsel reasonable acceptable to the City) and hold harmless the City, and those claiming by, through and under the City, from and against any and all liability, loss, damage, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any kind and nature (the "Claims") brought against, arising, suffered, incurred, or paid as a result of any release or threatened release of Hazardous Substances on or from the Premises which is caused or exacerbated by Lessee and/or its contractors, agents, employees, customers, and invitees, or anyone claiming by, through or under Lessee (collectively, with Lessee, the "Lessee Parties"). The City shall have no responsibility to Lessee or any of the other Lessee Parties for the presence of Hazardous Substances on the Premises or be required to abate or remediate the same; if Hazardous Substances are present on the Premises and materially interfere with Lessee's use of the Premises for the Permitted Uses, Lessee may terminate this Lease without recourse. The provisions of this Section shall survive the expiration or earlier termination of the Lease.

#### 6.5 ABANDONMENT OF USE.

Subject to fire or other casualty and/or other force majeure events outside the control of Lessee, Lessee covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If the Premises are not used for the Permitted Uses for a continuous period of one (1) year, the Premises shall be deemed abandoned, deserted, or vacated by Lessee, and the City shall have the right to terminate this Lease and recover exclusive possession of the Premises by written notice to Lessee. In the event the City exercises its right to terminate this Lease under this Section, this Lease shall terminate as of the date that is ninety (90) days after the date of the Town's notice to Lessee thereof, and Lessee's rights with respect to this Lease, including the Option, shall terminate as of such date, except for those provisions stated herein to survive the termination hereof.

### **ARTICLE VII - ASSIGNMENT AND SUBLETTING**

Lessee shall not assign, sublet, underlet, mortgage, pledge and/or encumber (collectively referred to as "Transfer") this Lease without the City's prior written consent, which may be withheld in the City's sole discretion. Consent by the City, whether express or implied, to any Transfer shall not constitute a waiver of the City's right to prohibit any subsequent Transfer; nor shall such consent

be deemed a waiver of the City's right to terminate this Lease upon any subsequent Transfer. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of Lessee's interest in the Lease by operation of law.

## **ARTICLE VIII - REPAIRS AND MAINTENANCE**

### **8.1 LESSEE'S RESPONSIBILITY**

Lessee shall be fully and solely responsible for the maintenance and repair of the Premises, including, without limitation, any and all structural and non-structural elements of the Premises, at its sole cost and expense. Lessee shall keep in good and safe order, condition and repair the Premises, including, without limitation, the Building and all electrical fixtures, windows, halls, stairwells, lavatories and all other areas of the Premises, the landscaping (including, without limitation, keeping the grass neat and cut and trimming of trees and bushes), the parking areas of the Premises, all pipes, wiring and lighting, all plumbing and utility lines serving the Premises, the boilers and the heating and ventilating system, and the fire protection equipment and systems serving the Premises, reasonable use and wear and damage by fire or other casualty excepted. Lessee shall also, at its sole expense, keep and maintain the Premises and all sidewalks, curbs and drives on or adjoining the same in a clean and orderly condition, free of dirt, rubbish, and unlawful obstructions. Lessee shall be responsible for removing snow and ice from the Premises, including all sidewalks, walkways, and parking areas. Lessee shall not permit the Premises to be overloaded, damaged, stripped, or defaced, nor suffer any waste. Lessee shall be responsible for removing trash from the Premises and the collection and disposal thereof. Lessee shall not allow rubbish or trash to accumulate on or about the Premises. Lessee agrees to keep, operate, use and maintain every part of the Premises in conformity with all requirements of the law and applicable fire underwriting and related regulations, and to do all other work necessary to comply with the foregoing covenant. Lessee acknowledges that the City shall have no obligation to maintain the Premises hereunder, or to pay for the same, except to the extent expressly provided in this Lease.

### **8.2 ANNUAL INSPECTIONS, BUDGET**

Without limiting the City's rights to access the Premises under other provisions of this Lease, the City hereby specifically reserves the right to conduct an annual inspection of the Premises, and Lessee shall allow entry and access to the New Bedford Fire Chief, Building Inspector, and such other persons as the Mayor may designate, for the purpose of investigating the condition of the Premises. The City shall provide Lessee with a minimum notice of twenty-four (24) hours, and not interfere unreasonably with Lessee's use of the Premises. The City may provide Lessee with an annual report of such assessments and list of repairs or maintenance that the City reasonably determines need to be made.

### **8.2 LESSEE'S FAILURE TO MAINTAIN**

If Lessee shall fail to keep the Premises in the condition required herein, or if repairs are required to be made by Lessee pursuant to the terms hereof, within thirty (30) days after notice by the City (or without notice in any emergency, immediately threatening life or property), the City shall have the right (but shall not be obligated) to make such repairs, replacements or perform maintenance work or any other work required of Lessee pursuant to this Lease and charge the reasonable cost thereof to Lessee, with interest.

## **ARTICLE IX - INDEMNIFICATION; RELEASE**

### **9.1 INDEMNIFICATION**

Lessee shall defend, indemnify, and save harmless the City from and against all Claims of whatever nature arising from or relating to Lessee's failure to comply with the terms of this Lease, Lessee's failure to comply with applicable laws, rules, bylaws, and regulations, the exercise of the rights granted hereunder, and/or any act, omission of Lessee and/or any of the other Lessee Parties and/or from any accident, injury, or damage whatsoever, however caused, to any person, or to the property of any person, in or about the Premises, or arising from any accident occurring outside the Premises but within the general area of the Premises, where such accident, injury or damage results or is claimed to have resulted from any act, omission or negligence on the part of any of the Lessee Parties. The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, including attorneys' fees, and the defense thereof with counsel acceptable to the Premises or counsel selected by an insurance company which has accepted liability for any such claim.

### **9.2 RELEASE**

To the maximum extent this Lease may be made effective according to law, Lessee agrees to use and occupy the Premises at Lessee's own risk, and the City shall have no responsibility or liability for any loss or damage to the Premises, including any fixtures or other personal property of Lessee or any person claiming by, through or under Lessee. Without limitation, Lessee agrees that the City shall not be responsible or liable to Lessee, or those claiming by, through or under Lessee, for any loss or damage resulting to Lessee or those claiming by, through or under Lessee, its or their property from the breaking, bursting, stopping or leaking of electric cables and wires, and water, gas or steam pipes.

### **9.3 SURVIVAL**

The provisions of this Article shall survive the expiration or termination of this Lease.

## **ARTICLE X - INSURANCE**

### **10.1 THE CITY'S INSURANCE**

The Parties expressly agree and acknowledge that the City has no obligation to maintain property insurance or any other kind of insurance on the Premises.

### **10.2 LESSEE'S INSURANCE**

Lessee shall obtain and keep in force at its own expense so long as this Lease remains in effect and thereafter so long as Lessee or anyone claiming by, through or under Lessee, uses or occupies the Premises or any part thereof, policies of insurance for the benefit of such parties, in the amounts, and in the manner and form set forth in this Article. Lessee shall furnish certificates evidencing each such insurance coverage to the City prior to the execution of this Lease, on each

anniversary of the Commencement Date, and at such other times as the City may reasonably request. Lessee shall require its insurer to give the City written notice at least thirty (30) days in advance of any termination, expiration or material changes in coverage. The kinds and amounts of such insurance coverage shall not be less than the kinds and amounts designated herein. The acceptance by the City of Certificates of Insurance indicating the kinds and limits of coverage shall in no way limit the liability of Lessee to any such kinds and amounts of insurance coverage.

(a) *Property Insurance.* Lessee shall, at its sole expense, obtain and keep in force during the Term, "all-risk" property insurance coverage on the Premises, including the Building and any fixtures and improvements now or hereinafter made to the Premises, including, but not limited to, machinery and boilers, naming Lessee as the insured, and otherwise in the customary form for property insurance coverage of buildings of similar character in the Primary Metropolitan Statistical Area that includes the City of New Bedford, naming the City as an additional insured. The amount of such insurance will be set forth on an "agreed amount endorsement" to the policy of such insurance and will not be less than 100% of the full replacement value of the Building and other improvements, as determined and increased from time to time;

(b) *Builder's Risk.* During the period of any construction, repair and/or replacement of the Improvements and/or any other work done by Lessee on or to the Premises, Lessee shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the City may reasonably require;

(c) *General Liability Insurance:* A Comprehensive General Liability policy on an occurrence basis endorsed to include broad form comprehensive general liability with a combined single limit of liability of not less than \$1,000,000.00. The policy shall name the City, and its officers, agents, servants, employees and consultants as additional insured parties.

(d) *Worker's Compensation Insurance:* Lessee and the other Lessee Parties, as applicable, shall provide Workers' Compensation Insurance required by law and Employer's Liability insurance for at least the amounts of liability for bodily injury by accident of \$100,000.00 each accident; bodily injury by disease each employee of \$100,000.00; and bodily injury by disease policy limit of \$500,000.00, or such greater amount as may be required from time to time by the laws of the Commonwealth of Massachusetts.

(e) *Umbrella/Excess Liability Insurance:* An Umbrella/Excess Liability insurance policy on an occurrence basis "following form" of the primary coverage with a limit of liability of \$3,000,000.00. The Umbrella/Excess Liability insurance policy shall include but not be limited to the following coverages for bodily injury, property damage and personal injury: (i) Premises - Operations Liability; (ii) Contractual Liability; (iii) Automobile Liability for owned, non-owned and hired vehicles. The City, its officers, agents, servants and employees shall be named as additional insurers.

(f) *Contractor's Insurance:* Should Lessee undertake any work on or to the Premises, including any Alterations, Lessee will be required to provide the City with evidence that Lessee has required its contractors to maintain (i) worker's compensation insurance in the amounts required by law (or reasonably comparable insurance if such insurance is no longer available), (ii) builder's risk (or such reasonably comparable insurance) insurance on an "all risk" basis (including collapse)

insuring against casualty to such construction for full replacement value of the work performed and the equipment supplies and materials furnished and stored, (iii) automobile liability insurance in the minimum amounts required by law with limits of liability not less than \$1,000,000 per occurrence for property damage and \$2,000,000 combined single limit, (iv) Employer's Liability Insurance affording protection in the amount of not less than \$500,000 per accident and \$500,000 for disease, (v) public liability insurance within limits in an amount not less than \$3,000,000 comprehensive general liability total with a limit of \$1,000,000 an occurrence, and (vi) Professional/Environmental Impairment Liability Insurance providing coverage for environmental contamination, bodily injury and/or property damage arising out of acts and omissions of Lessee or its contractors, employees or agents in the performance of any work or any other activities or failures to act at or with respect to the Premises in the amount of \$1,000,000 for each claim and \$1,000,000 in the aggregate (which insurance, unlike the other insurance noted above, may be made on a claims made basis). Lessee shall require that the City, and its officers, agents, servants and employees be named as additional insurers on all contractors, subcontractor's and independent contractor's insurance, excluding Workers' Compensation.

### 10.3 INCREASES IN COVERAGE

The City shall have the right to require Lessee to increase such limits when, during the Term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners or lessees are more or less generally increased, it being the intention of this sentence to require Lessee to take account of inflation in establishing minimum limits of insurance maintained from time to time on the Premises, which shall occur no more than once every three (3) years.

### 10.4 PERSONAL PROPERTY

Lessee agrees that the City shall have no responsibility or liability for any loss or damage or injury to from any cause whatsoever, including theft or otherwise of fixtures, improvements, or other personal property of Lessee. Lessee agrees that it shall continuously keep its fixtures, equipment and other personal property from time to time located in, on or about the Premises, and all leasehold improvements to the Premises constructed or installed by Lessee insured by reputable, duly licensed insurance companies against loss or damage by fire with the usual extended coverage endorsements. Lessee shall furnish to the City evidence of such continuous insurance coverage satisfactory to the City at the Commencement Date and each anniversary thereof. It is understood and agreed that Lessee assumes all risk of damage to its own property arising from any cause whatsoever, including, without limitation, loss by theft or otherwise.

Lessee hereby waives any and all rights of recovery which it might otherwise have against the City, its agents, employees and other persons for whom the City may be responsible for any loss or damage to Lessee's property or improvements in the Premises which are either required to be insured under the terms of this Lease or which Lessee, in the absence of any such requirement, elects to insure, notwithstanding that the loss or damage may result from the negligence, willful act or default under the terms of this Lease by the City, its agents, employees, contractors, or other persons for whom the City may be responsible.

### 10.5 GENERAL REQUIREMENTS



The City shall be named as an additional insured on all insurance policies (except Worker's Compensation). All required insurance shall be written with recognized insurers, licensed and doing business in Massachusetts and having a so-called Best's Rating of "A" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the City. Without limiting the City's other rights under any other provisions of this Lease, if Lessee shall fail to keep the Premises insured as provided herein, and if such failure shall continue to a period of ten (10) days following written notice by the City to Lessee thereof, then the City, without further notice to Lessee, may take out and pay for such insurance, and the amount of such payment shall become due and payable as Additional Rent on demand.

#### **ARTICLE XI – CASUALTY; EMINENT DOMAIN**

(a) For the purposes of this Article XI, "material part" shall be defined as that portion of the Premises which if damaged or taken by eminent domain would materially affect the use of the Premises for the Permitted Uses.

(b) If all or a material part of the Premises shall be destroyed or damaged by fire or other casualty, or if all or a material part of the Premises shall be taken by any public or quasi-public agency or authority other than the City for any public or quasi-public use under governmental law or by right of eminent domain, and the taking would materially interfere with the use of the Premises for the Permitted Uses, then this Lease shall terminate at the election of either the City or Lessee. Any such termination shall be effective thirty (30) days after the date of notice thereof.

(c) If any part of the Premises is damaged by fire or other casualty or is taken by a public authority and this Lease is not terminated by the City or Lessee as provided above, the City may, at its sole discretion, repair and restore the Premises, or what remains thereof in the case of a partial taking, to their condition prior to such damage, destruction, or taking, subject to appropriation of funds and compliance with applicable procurement and bidding laws. If the City elects to make any repairs, the City shall use good faith efforts to repair the Premises within a reasonable time, subject to the City's budgetary, appropriation and borrowing requirements and its obligation to comply with legal requirements relating to public building projects and public procurement.

(d) In the event of a taking by eminent domain, the City shall have, and hereby reserves and excepts, and Lessee hereby grants and assigns to the City, all rights to recover for damages to the Premises and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking or damage. Lessee covenants to deliver such further assignments and assurances thereof as the City may from time to time request, hereby irrevocably designating and appointing the City as its attorney-in-fact to execute and deliver in Lessee's name and behalf all such further assignments thereof. Nothing contained herein shall be construed to prevent Lessee from prosecuting in any condemnation proceedings a claim for the value of any of Lessee's usual trade fixtures installed in the Premises by Lessee at Lessee's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable hereunder by the City from the taking authority.

(e) If during the Lease term the Premises shall be damaged by fire or casualty, and if such damage shall materially interfere with Lessee's use of the Premises as contemplated by this Lease but this Lease is not terminated by the Parties, a just portion of the Base Rent payable by Lessee hereunder may be abated or reduced, but such abatement or reduction shall end when the

City shall have substantially restored the Premises or so much thereof as shall have been originally constructed by the City (exclusive of any of Lessee's Alterations, fixtures, furnishings, equipment and the like or work performed therein by Lessee) to substantially the condition in which the Premises were prior to such damage.

## ARTICLE XII - DEFAULT; TERMINATION

### 12.1 EVENTS OF DEFAULT

Each of the following events shall be deemed an "Event of Default" hereunder:

(a) If Lessee shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of thirty (30) days after written notice from the City to Lessee;

(b) If Lessee shall fail to maintain any insurance required to be maintained by the City hereunder, and such failure shall continue for a period of ten (10) days after written notice from the City to Lessee;

(c) If Lessee shall fail to perform or comply with any of the other terms, covenants or conditions in this Lease, and such failure shall continue for a period of thirty (30) days after written notice from the City to Lessee specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such thirty (30) day period, within such additional time reasonably necessary provided Lessee commences to cure the same within such thirty (30) day period and thereafter prosecutes the curing of such default with diligence (but in no event shall such additional period exceed sixty (60) days);

(d) If Lessee shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Lessee's leasehold estate for whatever reason, or Lessee shall make an assignment for the benefit of creditors, or Lessee shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Lessee any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal.

### 12.2 REMEDIES

If an Event of Default occurs, the City shall have the right at any time thereafter, while such default continues, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended, and remove Lessee's effects, without prejudice to any other right and/or remedy which may be available to the City, including, without limitation, injunctive relief. To the extent permitted by law, Lessee shall indemnify the City against all payments which the City may incur by reason of such termination during the residue of the Term. If Lessee shall default after reasonable notice thereof in the observance or performance of any conditions or covenants on Lessee's part to be performed or observed by virtue of any of the provisions of any article of this Lease, the City, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of Lessee. If the City makes any expenditures or incurs any obligations for the payment of money in connection with Lessee's default, including but

not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid to the City by Lessee as Additional Rent. Without limiting any of the City's rights and remedies hereunder, and in addition to all other amounts Lessee is otherwise obligated to pay, it is expressly agreed that the City shall be entitled to recover from Lessee all costs and expenses, including reasonable attorneys' fees, incurred by the City in enforcing this Lease from and after Lessee's default.

### 12.3 THE CITY'S RIGHT TO PERFORM LESSEE'S COVENANTS

Upon an Event of Default, the City may, but shall be under no obligation to, take any and all actions to cure such default. Without limiting the foregoing, the City may enter upon the Premises (after ten (10) days' written notice to Lessee except in the event of emergency) for any such purpose, and may take any and all action as may be necessary or convenient to cure the same, including, without limitation, making any payments required to cure any Events of Default. Notwithstanding the foregoing, the parties hereby agree that the City shall have the right to pay any premiums for insurance required to be maintained by Lessee hereunder, without being required to wait for a cure to be effectuated by Lessee, and the amount paid by the City shall be repaid by Lessee, upon demand.

### 12.4 SURRENDER UPON TERMINATION

Lessee shall, within thirty (30) days from the termination of this Lease, remove Lessee's personal property from the Premises and any improvements made by Lessee that can be removed without damage to the Premises. Lessee shall quit and peacefully surrender and deliver the Premises to the possession and use of the City without delay and in good order, condition and repair and otherwise in the condition in which Lessee is required to maintain the Premises during the Term hereof (excepting only reasonable wear and tear and damage from a Taking or from a fire or other casualty). The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing the day before the Commencement Date or created or suffered by the City, and shall be surrendered without any payment by the City on account of any Lessee Alterations and/or improvements. Lessee shall repair at Lessee's sole cost any damage to the Premises resulting from or caused by such removal.

### 12.5 CLOSING FEE

The parties agree that, should Lessee exercise its option to purchase the Premises in accordance with the provisions of Article 13 hereof at any time prior to the expiration of the Term, this Lease shall terminate on that date on which the City delivers a deed to the Premises to Lessee in accordance with the provisions of Article 13, provided, however, that Lessee shall grant the City the full benefit of this Lease and pay the City at closing the full amount of the Base Rent that Lessee would have paid hereunder for the balance of the remaining Term (and not the net present value of said Base Rent, the "Closing Fee"). Nothing herein shall relieve Lessee from paying the City all sums owed to the City hereunder until the deed is on record. In the event that Lessee fails to pay the Closing Fee to the City, this Lease and Lessee's Option to purchase the Premises shall terminate and the City shall have no obligation to convey the Premises to Lessee.

### 12.6 NO WAIVER

No failure by either the City or Lessee to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the City or Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the City or Lessee of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

#### 12.7 REMEDIES CUMULATIVE

Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise by the City or Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

### **ARTICLE XIII - PURCHASE OPTION**

#### 13.1 OPTION TO PURCHASE.

The Parties agree that Lessee shall have an option to purchase the Premises (the "Option") at the expiration of this Lease on \_\_\_\_\_, 2044 (the "Expiration Date") for consideration of One Dollar (\$1.00), provided that (a) Lessee is not then in default under this Lease, and (b) Lessee delivers written notice of its intent to exercise said Option ("Notice of Exercise") at least sixty (60) days prior to the Expiration Date, with the closing to occur on the Expiration Date in compliance with the terms hereof. In the event that Lessee wants to exercise the Option and close prior to the Lease Expiration Date, Lessee shall deliver the Notice of Exercise to the City at least sixty (60) days prior to the closing date, and the City will convey the Premises to Lessee for consideration of One Dollar, the payment of the Closing Fee and any other sums owed to the City hereunder, with all such sums to be paid at closing. Lessee's failure to pay such consideration shall result in the termination of the Option.

#### 13.2 EXERCISE OF OPTION

The Notice of Exercise shall be delivered to the City within the time period set forth above by certified mail, return receipt requested, with the closing to occur sixty (60) days from the date of mailing of the Notice of Exercise. If said sixty (60)-day closing period expires on a legal holiday, Saturday or Sunday, then the closing shall occur on the next day that the Registry of Deeds is open to the public. When the Notice to Exercise is mailed as provided herein, this Option shall be deemed exercised and this Option shall become a contract for the sale of the Premises at the price and upon the terms and conditions set forth herein, including the payment of the Closing Fee, if any.

#### 13.3 TITLE DEED UNDER OPTION

If this Option is exercised by Lessee, the City shall execute a quitclaim deed sufficient to transfer good and clear record and marketable title in the Premises to Lessee, free of all liens but subject to any and all encumbrances affecting the Premises as of the Commencement Date

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 shall be covered by said title standard or practice standard to the extent applicable.

#### 13.4 EXTENSION OF TIME FOR CLOSING UNDER OPTION

If the City shall be unable to give title to, or to make conveyance of, or to deliver possession of the Premises, all as herein stipulated, the City shall use good faith efforts to remove any defects in title or to deliver possession as provided herein, as the case may be, in which event the City's time for performance hereunder shall be automatically extended for a period of up to sixty (60) days but the purchase price shall remain unchanged, but in no event shall good faith efforts require the City to expend more than \$2,500, inclusive of attorneys' fees. If at the expiration of the extended time the City is unable to convey good marketable fee simple title or deliver possession, Lessee may terminate this Lease, including the Option, whereupon all obligations of the parties hereto shall cease and this Lease shall terminate without recourse to the parties hereto, subject to Lessee's right to make an election pursuant to Section 13.5.

#### 13.5 ELECTION TO ACCEPT TITLE UNDER OPTION

Lessee shall have the election, at either the original or any extended time for performance, to accept the Premises and such title to the Premises as the City can deliver in its then condition and to pay therefore the purchase price without deduction, in which case the City shall convey such title.

#### 13.6 INSPECTION OF PREMISES

(a) *Investigations.* Lessee hereby acknowledges that it was given the opportunity, prior to the Commencement Date, to conduct such surveys, investigations, inspections and studies of the Premises and such other due diligence activities that it deemed necessary or desirable, that it has conducted to its satisfaction a complete and thorough inspection, analysis and evaluation of the Premises, including but not limited to environmental issues, and agrees that it has satisfied itself with the results of such inspections. Lessee will accept the Premises at the closing in an "AS IS" condition and with "ALL FAULTS" without any warranty or representation by the City whatsoever relating to the Premises, and Lessee shall be deemed to have acknowledged and confirmed that Lessee has not relied on any representation or inducement which was or may have been made or implied by City or any other party acting on behalf of City with respect to the Premises or any circumstances or conditions affecting the Premises. Lessee further agrees that, to the extent that the City provided Lessee with any information from any inspection, engineering or environmental reports or copies of any documents relating to the Premises, the City made no representations or warranties with respect to the accuracy or completeness of same or otherwise concerning the contents of such reports or documents relating to the Premises.

(b) *Release.* Lessee, for itself and its successors and assigns, hereby forever releases the City and its officers, agents and employees, successors and assigns from any and all claims, demands, obligations, costs, loss or damage, causes of action, legal or administrative proceedings, liabilities,

penalties, fines, liens, judgments, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, arising out of or in any way connected with the condition of the Premises, including without limitation, the environmental and sub-surface condition of the Premises. Lessee agrees that it shall not commence, aid or support in any way, seek contribution from and/or prosecute against the City, its officers, directors, agents and employees and its and their respective successors and assigns, any action or other proceeding based upon any Claims covered in this section, and shall defend and indemnify the City from any and all Claims related to the environmental condition of the Premises. Lessee, on behalf of itself, its members and their respective successors and assigns, expressly waives any rights or benefits available to it with respect to the above release under any provision of applicable law which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time the release is agreed to, which, if known to such creditor, would materially affect a settlement. Lessee, by the execution of this Lease, acknowledges that it fully understands the foregoing release, and with this understanding, nonetheless elects to and does assume all risk for claims known or unknown, described in this Article.

(c) *Survival.* The provisions of this Section shall survive the closing (and shall be incorporated into the deed from the City to Lessee) or the termination of this Lease.

### 13.7 POSSESSION AND CONDITION OF PROPERTY UNDER OPTION

The City shall deliver the Premises at the time of delivery of the deed in their AS-IS condition, it being agreed that Lessee will have had exclusive use and possession of the Premises during the Term of the Lease, and the City makes no representation or warranty as to the condition of the Premises or their suitability for any use.

### 13.8 ADJUSTMENTS UNDER OPTION

At closing, Lessee shall pay the City: (a) the purchase price for the Premises and (b) any and all other sums owed by Lessee to the City under the terms of this Lease, including, without limitation, the Closing Fee, if applicable. Lessee's failure to make such payments to City at closing shall constitute a material default hereunder, and the City shall be entitled to terminate this Lease (if it has not already expired) and/or to terminate Lessee's Option rights under this Lease without recourse. Any Additional Rent or other sums owed by Lessee under this Lease as of the date of the closing shall be paid in full by Lessee.

## **ARTICLE XIV - MISCELLANEOUS PROVISIONS**

### 14.1 CHANGES IN LEASE

None of the covenants, agreements, provisions, terms and conditions of this Lease shall in any manner be changed, altered, waived or abandoned except by a written instrument signed, sealed and mutually agreed upon by all the parties hereto, and approved as required by law. Such instrument shall not be void for want of consideration.

### 14.2 QUIET ENJOYMENT

The City hereby warrants and covenants that, so long as Lessee is in compliance with the terms of this Lease, Lessee shall have peaceful and quiet use and possession of the Premises without hindrance or interruption on the part of the City, or by any other person(s) for whose actions the City is legally responsible, or by any person claiming by, through or under the City, subject to the City's reserved rights.

#### 14.3 YIELD UP AT TERMINATION OF LEASE

Lessee shall at the termination of this Lease remove all Lessee's effects from the Premises. Lessee shall deliver the Premises to the City in the condition in which Lessee is required to maintain the same as set forth in this Lease, reasonable wear and tear excepted and fire and other casualty excepted.

#### 14.4 HOLDING OVER

If Lessee or anyone claiming under Lessee shall remain in possession of the Premises or any part thereof after the termination thereof, without any agreement in writing between the City and Lessee with respect thereto, the person remaining in possession shall be deemed a tenant at sufferance. After acceptance by the City of any payments made for such occupancy, the person remaining in possession shall be deemed a tenant from month-to-month, subject to the provisions of this Lease insofar as the same may be made applicable to the occupant from month-to-month, which occupancy or use may at any time be terminated by either party by thirty (30) days' prior written notice to the other party.

#### 14.5 SEVERABILITY

If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

#### 14.6 NO PERSONAL LIABILITY

No official, employee or consultant of the City of New Bedford shall be personally liable to Lessee or any partner thereof, or any successor in interest or person claiming through or under Lessee or any such partner, in the event of any default or breach, or for or on account of any amount which may be or become due, or on any claim, cause or obligation whatsoever under the terms of this Lease or any amendment or extension entered into pursuant hereto.

#### 14.7 NOTICE

Any notice relating to the Premises and/or required to be given hereunder shall be in writing and shall be deemed duly served when mailed by registered or certified mail, postage prepaid, sent by recognized overnight courier, or hand-delivered, addressed to the other party at the addresses set forth below:

Lessee:

City: Mayor  
City of New Bedford  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

With a copy to: City Solicitor  
City of New Bedford  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740,

or at such other addresses as the parties may from time to time designate by written notice to the other party in the manner set forth herein.

#### 14.8 ENFORCEMENT OF THE CITY'S LIABILITY

Notwithstanding anything contained in this Lease to the contrary and notwithstanding any equitable rights and remedies available to Lessee, the City's liability under this Lease shall be enforceable only out of the City's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against the City, nor shall there be any personal liability with respect to any obligations to be performed hereunder. In no event shall the City or Lessee be liable to the other for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

#### 14.9 CAPTIONS

The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

#### 14.10 BINDING AGREEMENT; AGREEMENTS; GOVERNING LAW

This Lease shall bind and inure to the benefit of the parties hereto and their respective representatives, successors and assigns. All covenants, agreements, terms and conditions of this Lease shall be construed as covenants running with the land. This Lease contains the entire agreement of the parties and may not be changed or modified except by a written instrument in accordance with the provisions herein. This Lease shall be governed by the laws of the Commonwealth of Massachusetts and any disputes regarding this Lease shall be brought in the courts of the Commonwealth of Massachusetts. The provisions of those laws shall not be deemed waived by any provision of this Lease.

#### 14.11 COUNTERPARTS

This Lease may be executed in any number of counterparts, each copy of which shall be identical, and any one of which shall be deemed to be complete in itself and may be introduced in evidence or used for any purpose without the production of the other copies.



14.12 WHEN LEASE BECOMES BINDING

This Lease shall become effective and binding only upon the execution and delivery hereof by both the City and Lessee.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this instrument under seal as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

The City: City of New Bedford

Lessee:

\_\_\_\_\_  
Jonathan F. Mitchell, Mayor

Approved as to Form and Legality:

\_\_\_\_\_  
Mikaela A. McDermott, City Solicitor