

Proposer / Bidder Registration Form

It is the Bidder's responsibility to make certain they have received any/all addenda relating to their bid / proposal prior to the bid opening date. If you are downloading a bid we strongly encourage you to notify the City of Beverly Purchasing Department at dgelineau@beverlyma.gov and provide us with the following information. In the event any addenda is issued it will be sent to all bidders who have provided the City with this information.

Request for Proposal or Invitation for Bid Number: 15-027

Contact Name:

Company Name:

Address:

City/Town:

State:

Zip Code:

Phone:

Fax:

Cell:

Email:

CITY OF BEVERLY, MASSACHUSETTS
REQUEST FOR PROPOSALS
SALE OF NON-AVIATION USE AIRPORT PROPERTY

#15-027



SEPTEMBER 2015

CITY OF BEVERLY, MASSACHUSETTS

**REQUEST FOR PROPOSALS
SALE OF NON-AVIATION USE PARCEL
OF INDUSTRIAL LAND NEAR
BEVERLY AIRPORT**

PROPOSAL DUE DATE: 11:00 noon (local time), Thursday, November 12, 2015

Return proposals to: City of Beverly
Purchasing Department
City Hall, 191 Cabot Street
Beverly, Massachusetts 01915

Competitive sealed proposals will be received by the Purchasing Department, at the above-specified location, until the time and date cited.

Proposals must be in the actual possession of the Purchasing Department on or prior to the exact time and date indicated above. ***NO INCOMPLETE, FAXED, ELECTRONICALLY MAILED, OR LATE PROPOSALS WILL BE CONSIDERED.***

All procurement activities conducted by the City of Beverly are in conformance with the rules and regulations of Massachusetts General Laws, Chapter 30B. The law is available for review in the Purchasing Department at the above address. Copies of the law are also available for sale to the public at a fee of 20 cents per page at the Purchasing Department or available on line at <http://www.state.ma.us/legis/laws/mgl/index.htm>.

Questions regarding this Request for Proposals should be addressed to: David Gelineau, Purchasing Agent, City Hall, 191 Cabot Street, Beverly, MA 01915; phone (978) 921-6000, ext. 2350 (dgelineau@beverlyma.gov).

REQUEST FOR PROPOSALS (RFP)

Sale

Fully-Serviced Industrially-Zoned Parcel Near Beverly Municipal Airport

1.0 INTRODUCTION

The City of Beverly is seeking sealed proposals from qualified parties to purchase and develop one parcel of municipally-owned land located at 105 Sam Fonzo Drive (Map 90, Lot15) near the Beverly Airport.

The roughly 4.5 acre lot is located on the southerly corner of L.P. Henderson Road/Sam Fonzo Drive intersection and is zoned for office space, manufacturing, and other industrial uses. It is in close proximity to Route 128 and Route 97 and abuts the Beverly Airport as well as office, industrial, and manufacturing businesses in the Cherry Hill Industrial Park and Garden City Business Park. See Appendix D for a map of the area and individual parcel.

2.0 PROPERTY INFORMATION

2.1 General Description

The parcel of City-owned land is approximately 4.5 acres in size. It has about 600' of frontage on both L.P. Henderson Road and Sam Fonzo Drive. It has a development capacity of approximately 26,500 - 30,000 square feet. The parcel is shown in Appendix D that depicts topographical, water resources, infrastructure and dimensional information specific to the lot. All dimensions are approximate.

2.2 Zoning Requirements

The parcel is zoned Restricted Industrial (“IR”), which permits a number of uses including light manufacturing, office, and scientific research uses by right. Other uses such as hotels are allowed by Special Permit. The zoning sets maximum lot coverage requirements for buildings and impervious pavement in addition to standard setback requirements. See Appendix E for a copy of Section 29-19 of the Zoning Ordinance (IR, Restricted Industrial zoning district provisions).

The City urges respondents to propose commercial or industrial use of the parcel advertised in this RFP, even though limited residential uses are technically allowed under certain circumstances.

The City has elected to require that any development project proposed for this site be subject to the City’s site plan review process, regardless of the size of the proposed building. See Appendix F for a copy of Section 29-29.C. of the Zoning Ordinance.

Proposers are expected to review and analyze all of the City’s zoning requirements (including those not provided herein), the site’s physical and environmental conditions and reuse potential, required governmental approvals, and other development and legal considerations beyond that which is provided in this RFP. The City’s zoning ordinance is available for public review in both the Planning and Development Department (City Hall, **191 Cabot Street**) and the Office of Municipal Inspections (Memorial Building, **502 Cabot Street**). The City’s zoning ordinance is available in entirety online at:

<http://www.beverlyma.gov/departments/planning/zoning-ordinance/>:

Proposals must adhere to all applicable State and local building codes, ordinances, regulations and laws, subject to any relief that may be granted by the governing agency.

2.3 Environmental Considerations

2.3.1 Watershed

As noted above, the parcel is subject to the provisions of the City's Watershed Protection Overlay Zoning District. That ordinance requires a special permit from the Planning Board, and the permitting process includes a review of the project by the Salem and Beverly Water Supply Board to safeguard the public's interest in protecting its drinking water supply.

The City is committed to taking every reasonable measure to protect the integrity of the Wenham Lake watershed and the quality of its drinking water supply. For this reason, the City expects respondents to integrate best management practices and/or low impact development techniques into proposed site development plans. See Appendix H for general information on low impact development tools and techniques.

2.3.2 Contamination

The City is not aware of any environmental contamination issues on the parcel included in this RFP.

2.3.3 Wetlands Resources

A portion of the site (along the Henderson Road frontage) contains a wetland resource. There is also a wetland resource on an abutting privately-owned lot that may affect development on this site. Approval from the Beverly Conservation Commission for proposed construction will therefore likely be required, depending on the proposed site layout. The Beverly Conservation Commission administers not only the requirements of the Wetlands Protection Act (M.G.L. Chapter 131) but also the City's non-zoning wetlands ordinance and regulations. The State's Wetlands Protection Act can be viewed on line at <http://www.mass.gov/legis/laws/mgl/131-40.htm>; the attendant regulations can be viewed at <http://www.mass.gov/dep/service/regulations/310cmr10a.pdf>.

The City of Beverly's Wetlands Ordinance and Regulations are attached as Appendix E for reference. The City's wetlands ordinance and regulations can also be found at: <http://www.beverlyma.gov/boards-commissions/conservation-commission/ordinances-and-regulations/>

2.4 Airport-Related Issues

2.4.1 Federal Aviation Administration (FAA) and Massachusetts Department of Transportation (MassDOT)

Proposed construction must comply with certain FAA and MassDOT regulations. This will include at a minimum FAA Form 7460-1 and MassDOT Form E10, and either agency may require other additional documentation and permits. In addition, the FAA must give its concurrence on the sale of this property to a private party.

The City's Airport Commission will work collaboratively with successful respondents to simplify and facilitate the approval and permitting processes at all levels, including interaction with the FAA and MassDOT and coordination with City boards and departments. For example, the Commission will assist successful respondents with obtaining and filing required forms and providing information on airspace penetration restrictions, airport setback requirements, and the aviation easement documents that will be required by both agencies.

2.5 Development Standards

The City of Beverly encourages prospective respondents to adhere to the architectural development guidelines contained in Appendix H because of their impact on the evaluation of a proposal under Sections 5.2.7 of this RFP.

2.6 Developer's Permitting Obligations

It will be the responsibility of the successful proposer to acquire at his/her expense all necessary waivers, approvals and permits from appropriate regulatory agencies that may be needed for the project, including but not limited to the Beverly Zoning Board of Appeals, City Council, Conservation Commission and Planning Board, various City departments and the State's Department of Environmental Protection.

The successful respondent will be required to file all permit applications needed for the project within one hundred and twenty (120) days of signing the Purchase and Sales Agreement and shall be obligated to proceed with due diligence in obtaining necessary permits and approvals and a Building Permit. The City of Beverly will provide appropriate information, documentation, and assistance to the successful proposer during the permitting process.

3.0 PROPOSAL REQUIREMENTS

3.1 *General*

Copies of this RFP may be obtained for \$50.00 by contacting the City's Purchasing Department at (978) 921-6000, extension 2350 or by visiting City Hall at 191 Cabot Street during normal City Hall business hours (Monday through Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m. to 7:30 p.m.; Friday, 8:30 a.m. to 1:00 p.m.).

The RFP may be downloaded for free from the City's web site (www.beverlyma.gov). However, only those proposers who submit the Proposer Registration Form (available on line) to the City's Purchasing Agent will be considered official RFP holders and will be notified of any addenda.

A deposit of Five Thousand Dollars (\$5,000.00) (cash, treasurers' check or money order) must be submitted as part of the proposal package. Deposits shall be returned to unsuccessful proposers within seven (7) business days after the City executes a Purchase and Sales Agreement with the successful proposer. If the successful proposer fails to execute a purchase and sales agreement with the City after award, the deposit shall be retained by the City.

3.2 *Pre – Proposal Conference*

A pre-proposal conference may be scheduled on the site if interest from prospective proposers warrants.

3.3 *Proposal Format and Deadline*

Respondents must submit twelve (12) copies of their proposal containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "Sale of Non-Aviation Use Airport Property" on the outside of the envelope. **Please submit twelve (12) price proposals in sealed envelopes marked in the lower left hand corner – "Sale of Non-Aviation Use Airport Property"**. There are **not** separate price and non-price proposals. Proposals must be completed in ink or typewritten and delivered to:

City of Beverly Purchasing Department
City Hall, 191 Cabot Street, Second Floor
Beverly, MA 01915

on or before 11:00 a.m. on Thursday, November 12, 2015, at which time the proposals will be publicly opened. No late, incomplete, faxed, or electronically mailed proposals will be accepted. Proposals must be in the possession of the Purchasing Department on or prior to the exact time and date indicated above in order to be considered.

3.4 *Required Submissions*

3.4.1 Letter of Transmittal

The proposal shall include a one page letter of transmittal signed by the principal(s) of the proposer and addressed to the City's Purchasing Department.

3.4.2. Summary of Proposal Form

The form included in Appendix A must be included in both the price and non-price proposal sections of each submitted response.

3.4.3 Description of Development Proposal

The proposal must include a detailed description of the proposed development concept including (but not limited to) the proposed use of the property, the employment expected to be generated from the use, and all associated improvements arising from the development including the benefits and impacts of the development on the City, all as set forth below:

- A description of the proposed use(s) and estimated square footage of floor space by use. Include any proposed construction of buildings, additions, outbuildings, parking lots, landscaped areas, driveways, and other modifications to the site in at least a conceptual format;
- A description and quantification of the populace the development is expected and intended to serve, including the types and number of employees and/or patrons/customers;
- A description of the benefits of the project on the City's stream of tax revenue, expressed in terms of initial investment, future investment, expected real estate, personal property, excise, and other tax revenue resulting from the proposed development.
- A description of the benefits of the project to both the City in general and the area surrounding the project site;
- A description of the potential impacts of the project on the environment and the area surrounding the project;
- A detailed list of all permits that would be needed to construct the proposed development;
- A description of how the proposer plans to construct the project, including a time line for permitting, completing improvements, and making capital investments;
- A discussion of municipal services required to service the new development, including traffic impacts, wastewater generation, water consumption, and drainage;
- An analysis of the ways in which the proposal satisfies the evaluation criteria listed below;
and

- Adherence to the requirements of this RFP.

3.4.4 Design Drawings

Proposals must include 11" x 17" copies of the plans listed below sufficient to adequately describe the development concept. Color illustrations are preferred and additional plans are welcome.

- Site plan, schematic building elevations, and color renderings
- Typical floor plan(s)
- Landscaping and parking plan indicating open spaces, waterways or wetlands and associated buffer zones (if any), planting areas, and parking areas.

The plans shall include approximate dimensions and heights of proposed building(s) and other structures, setback distances from property lines, and total square footage estimates (expressed in numbers and percents) for all floors and lot coverage.

3.4.5 Development Team Information

The proposal must include a description of the development team or ownership entity, the individuals and firms to be involved in the development and operation of the facility and their experience. Individuals and/or firms may be part of more than one team submitting proposals. The description of the development team must include the name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact person to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team.

- A description of the organizational structure of the development team or ownership entity.
- A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out design, permitting, financing, marketing (if applicable), construction, and operation.
- If the proposer is not an individual doing business under his/her name, a description of the firm/organization and its organizational status (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdiction(s) in which it is registered to conduct business.
- Identification of the end users/tenants and a description of the nature and degree of their commitment to the project described in the proposal.
- The legal entity owning any land other than the City land that may be included as part of the development proposal.

3.4.6 Project Financing and Financial Analysis

The proposer must submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal must include:

- A plan for financing the development, including a “sources and uses” of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized lending institutions, background information evidencing the soundness of such financing sources; and
- A development budget for the project, including hard and soft construction costs, and a five-year operating pro-forma or five-year investment rate and schedule.
- A letter from a lending institution stating the project proponent is preapproved for financing to support the proposed development project as stated in the financial analysis

3.4.7 Projection of Municipal Revenue

The proposal shall contain a statement of the real estate, personal property, excise and other tax revenue anticipated to be generated as a result of the development over the next ten years, with underlying calculations. If the proposer is a tax-exempt organization, the proposal shall instead set forth a schedule and list of proposed Payments In Lieu of Taxes (PILOT) to be paid to the City of Beverly and an explanation of how the figure was determined. If a PILOT payment is proposed, the schedule and list must clearly specify a proposed legal mechanism to obligate payment in perpetuity and should include a legally-defined escalator.

3.4.8 References

The proposal shall include descriptions of similar projects and references for those projects with names and telephone numbers. The proposal shall also include at least two (2) banking or other financial references.

3.4.9 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement and Non-Collusion/ Tax Certification

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement as well as an executed Non-Collusion/Tax Certification in the forms included in Appendices B and C.

3.4.10 Minority and Women Owned Business Enterprises

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the State Office of Minority and Women Owned Business Assistance (SOMWBA). Proposals shall state whether the development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

3.3.11 Proposed Terms

Proposals shall specify the proposed terms of the sale (if applicable), non-monetary considerations, insurance, any easements or cross-easements needed for the development, mortgage financing contingencies, if any, and rights of mortgagees.

4.0 SELECTION PROCESS

4.1 Rule for Award

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the RFP, will be selected.

4.2 Evaluation Committee and Process

The City of Beverly will appoint an Evaluation Committee for the purposes of evaluating responses to this RFP. The Committee will be responsible for determining whether any or all proposals should be rejected in the best interest of the City, and for recommending to the Mayor as the City's Chief Procurement Officer which proposal, in its collective opinion, is the most advantageous proposal to the City.

Following the Committee's recommendation, the City will enter into a Purchase and Sale Agreement with the proposer submitting the most advantageous proposal. The Purchase and Sale Agreement shall, among other things, require the proposer to begin the permitting and approval process. The mutually agreed upon sale or lease will occur after all permits and approvals have been obtained for the development and all appeal periods have expired without an appeal having been filed or otherwise resolved.

Should the City and the proposer who submits the most advantageous proposal be unable to execute a Purchase and Sale Agreement, the City may, at its sole discretion, enter into negotiations to execute a Purchase and Sale Agreement with the next most advantageous proposal. The City may, at its sole discretion, repeat this procedure with each proposer who submits an advantageous proposal until a Purchase and Sale Agreement is successfully executed between the City and a proposer.

5.0 RFP EVALUATION CRITERIA

5.1 Minimum Criteria

Only those proposers who submit all forms and materials listed in Section 3 "Proposal Requirements" of this RFP will be considered responsive and responsible proposers. Any proposal that fails to include all of the required submissions shall be deemed non-responsive and will not be further considered.

5.2 Evaluation Criteria

The following criteria will be used to rate the proposals:

5.2.1 Completeness of the proposal:

- a. *Highly Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with all of the core elements and requirements stated in the RFP.
- b. *Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.
- c. *Unacceptable:* The proposal does not contain a clear plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.

5.2.2 Relevant experience of development team with similar projects:

- a. *Highly Advantageous:* The proposer has at least seven (7) years of experience designing, developing and/or operating projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.
- b. *Advantageous:* The proposer has at least four (4) years of experience designing, developing and operating projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.
- c. *Not Advantageous:* The proposer has less than four (4) years of experience designing, developing and operating projects of similar size and scope to this project, and/or does not have the demonstrated financial capacity to complete the proposed project, and/or fails to demonstrate an understanding of permitting requirements and an ability to manage State and local permitting processes.

5.2.3. Level of Initial Investment

- a. *Highly Advantageous:* The proposal calls for the investment of at least Two Million Dollars (\$2,000,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*
- b. *Advantageous:* The proposal calls for the investment of less than Two Million Dollars (\$2,000,000.00) but more than One Million Dollars (\$1,000,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*
- c. *Not Advantageous:* The proposal calls for the investment of less than One Million Thousand Dollars (\$1,000,000.00) but more than Five Hundred Thousand (\$500,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*
- d. *Unacceptable:* The proposal calls for the investment of less than Five Hundred Thousand Dollars (\$500,000.00) within the first twenty four (24) months of ownership, *exclusive of the cost of acquisition.*

5.2.4 Real Estate, Other Tax, and/or PILOT Revenue (not including fees for services such as utility payments)

- a. *Highly Advantageous:* The proposal will result in more than Forty Thousand Dollars (\$40,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.
- b. *Advantageous:* The proposal will result in less than Forty Thousand Dollars (\$40,000.00) but more than Twenty Thousand (\$20,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

- c. *Not Advantageous:* The proposal will result up to Twenty Thousand Dollars (\$20,000.00) but more than Twelve Thousand Dollars (\$12,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.
- d. *Unacceptable:* The proposal will result in less than Twelve Thousand (\$12,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project, or does not propose a legally-binding, on-going annual PILOT payment.

5.2.5. Environmental Sensitivity of Design

- a. *Highly Advantageous:* The proposed building and site design and construction methods and materials incorporate energy conservation measures and low impact development techniques that minimize the environmental impacts of site development.
- b. *Advantageous:* The proposed building and site design and construction methods and materials incorporate either energy conservation measures or low impact development techniques that minimize the environmental impacts of site development, but not both.
- c. *Unacceptable:* Neither the proposed building and site design or proposed construction methods and materials incorporate energy conservation measures or low impact development techniques that minimize the environmental impacts of site development.

5.2.6. Job creation: computed on a full time equivalent (FTE) basis for construction and permanent employment. The review committee will take into consideration a well documented basis for job creation estimates when rating this criterion.

- a. *Highly Advantageous:* The proposed land use for the project site will create the highest number of jobs than any other project proposed.
- b. *Advantageous:* The proposed land use for the project site will create the second highest number of jobs than any other project proposed.
- c. *Not Advantageous:* The proposed land use for the project site will create fewer than the first and second highest estimated by any proposer.

5.2.7 Architectural Development Guidelines

- a. *Highly Advantageous:* The proposal clearly demonstrates through design drawings that the project is aligned with recommended architectural guidelines provided in Appendix I of this request for proposals.
- b. *Advantageous:* The proposal clearly demonstrates through design drawings that the project generally complies with recommended architectural development guidelines provided in Appendix I of this request for proposals.
- c. *Not Advantageous;* The proposal does not comply with recommended architectural development guidelines provided in Appendix I of this request for proposals or the proposal does not include complete set of design drawings to adequately review architectural and design details of the project.

5.2.8 Proposed Purchase Payment

- a. *Highly Advantageous*: The proposed purchase price is the highest price offered by any proposer.
- b. *Advantageous*: The proposed purchase price is the second highest price offered by any proposer.
- c. *Not Advantageous*: The proposed purchase price is the third highest price offered by any proposer.
- d. *Highly Dis-advantageous*: The proposed purchase price is less than the third highest price offered by any proposer.

6.0 OTHER GENERAL RFP PROVISIONS

Should the proposer find a discrepancy in, or omission from, the general terms and conditions or instructions to proposers, or should there be any doubt as to their meaning, proposers shall notify the Purchasing Department in writing at least seven (7) days prior to the deadline for submission of responses for clarification. No oral interpretations shall be considered valid.

Any person, firm, or corporation desiring to submit a proposal for the land shall be responsible for examining the terms and conditions of this RFP and the inspection of the parcel which is to be sold, and shall judge for themselves all of the circumstances and conditions affecting their proposal. Failure on the part of any proposer to make such examination or to thoroughly investigate and research existing conditions shall not be grounds for any declaration that the proposer did not understand the conditions of the RFP or of their proposal.

No proposal will be considered from any person, firm, or corporation that is in arrears or is in default to the City of Beverly on any debt or contract, or that is defaulter as surety or otherwise upon any obligations to the City of Beverly or has failed to faithfully perform any previous contract with the City of Beverly.

Written addenda are the sole source of correction or change to the RFP, and if any are required they shall be sent in writing to all individuals and/or firms registered with the Purchasing Department.

The City of Beverly reserves the right to extend the deadline for submission of proposals, to request supplementary information and to negotiate the most favorable sale terms on behalf of the City. The City further reserves the right to reject any and all proposals, waive any defects, informalities, and minor irregularities, and make such award or act otherwise as it may deem in its best interest.

LIST OF APPENDICES

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| APPENDIX A | SUMMARY OF PROPOSAL FORM |
| APPENDIX B | DISCLOSURE OF BENEFICIAL INTEREST IN REAL ESTATE PROPERTY TRANSACTION STATEMENT FORM |
| APPENDIX C | NON-COLLUSION / TAX CERTIFICATION FORM |
| APPENDIX D | SITE MAP |
| APPENDIX E | IR (RESTRICTED INDUSTRIAL) DISTRICT ZONING PROVISIONS – SECTION 29-19 |
| APPENDIX F | SITE PLAN APPROVAL ZONING REGULATIONS – SECTION 29-29.C. |
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APPENDIX A

SUMMARY OF PROPOSAL FORM

Name of Respondent: _____

This RFP response proposes to purchase the property advertised in the RFP issued by the City of Beverly entitled "Sale of Non-Aviation Use Airport Property" and published in September 2015.

PROPOSED PURCHASE PRICE

Proposed purchase price:

_____ \$ _____
(in words) (in numbers)

Signature of Respondent: _____

Date: _____

In the event of a discrepancy between the written in words amount and the written in numbers amount the higher price shall prevail.

APPENDIX B

**DISCLOSURE OF BENEFICIAL INTEREST IN REAL ESTATE PROPERTY TRANSACTION
STATEMENT FORM
ACQUISITION OR DISPOSITION OF REAL PROPERTY**

For Acquisition or disposition of Real Property by _____ the undersigned does hereby state, for the purpose of disclosure pursuant to Massachusetts General Laws, Chapter 7, section 40J, of a transaction relating to real property as follows:

- (1) REAL PROPERTY DESCRIPTION:

- (2) TYPE OF TRANSACTION:

- (3) SELLER or LESSOR:

- (4) BUYER or LESSEE:

- (5) Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above:

NAME:

RESIDENCE:

- (6) None of the above mentioned persons is an employee of the Division of Capital Asset Management or an official elected to public office in the Commonwealth except as listed below.

- (7) This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named above. If this form is signed on behalf of a corporation or other legal entity, it must be signed by a duly authorized officer of that corporation or legal entity. 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 and Maintenance within (30) days following the change of 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: _____

APPENDIX C

NON-COLLUSION /TAX CERTIFICATION FORM

BID CERTIFICATION

Complete this page by signing in the space below and return with completed pricing pages.

As required under Chapter 233 and 701 of the Mass. Acts and Resolves of 1983 and Chapter 30B of Massachusetts General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below.

Failure to offer such signature will result in rejection of the bid.

1. *"The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or their organization, entity, or group or individuals" and,*
2. *"Pursuant to M.G.L. c.62C, §49A, I hereby certify, under penalties of perjury that to my best knowledge and belief the undersigned bidder has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support."*

This bid is submitted by:

(Complete name of firm to be given here)

Signature: _____

Contact Person: _____

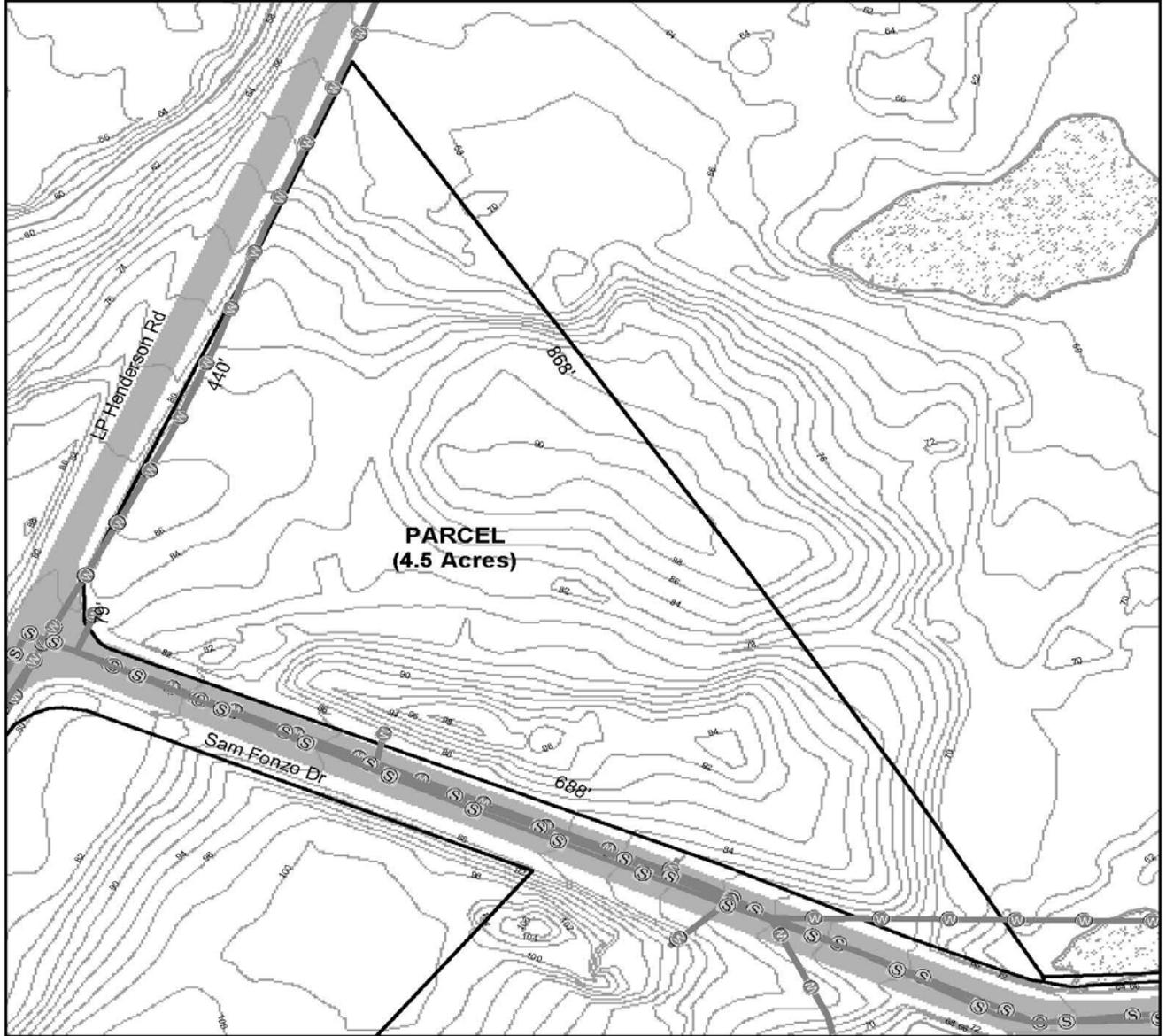
Business Address: _____

Email Address: _____

Telephone: _____ Employer I.D. #: _____

APPENDIX D

SITE MAP



PARCEL

Map05-062C
July 6, 2005
Revised May 3, 2006
Roland Adams

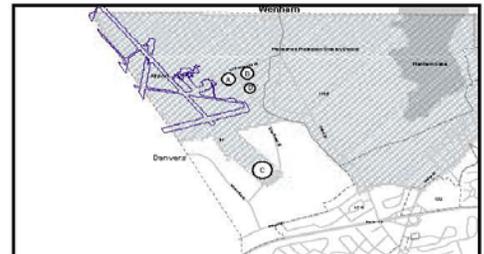


1 inch = 100 feet

Legend

-  Sanitary Sewer Main
-  Water Main
-  Wetlands
-  Contour-2 Ft NAVD88
-  Airport

Parcel B from General Area



APPENDIX E

IR (RESTRICTED INDUSTRIAL) DISTRICT ZONING PROVISIONS - SECTION 29 – 19

29-19 IR - RESTRICTED INDUSTRIAL, RESEARCH & OFFICE DISTRICT

A General Description

This district is established to provide principally for office complexes, light industrial parks, and necessary support facilities, including ancillary storage, service, and retail uses.

B Uses by Right

Property and buildings shall be used only for the following purposes:

1. Historic site including historic dwellings, or museum not operated for profit.
2. Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.
3. Business and professional offices; banks.
4. Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.
5. Manufacturing, assembly, processing, packaging, research and testing operations including the following uses, provided that such operations shall be conducted entirely within an enclosed building or structure: products developed from previously-processed materials such as bone, ceramic, cloth, glass, leather, metals, plastics, paper, rubber (except tires), wood (except planing mills), electrical and mechanical instruments and appliances, optical goods, cosmetics, toiletries, and pharmaceutical products.
6. Administrative offices, data processing centers, and laboratory for scientific and industrial research including testing and product development.
7. Printing and publishing establishment, including photostatic copying services.
8. Taxi, rail, bus passenger terminal.
9. Contractors' or craftsmen's shop, including carpentry, welding, ornamental iron works, electrical and machine shops, provided that such use is not located within 200' of any "R" District, and further provided that such use is screened from surrounding uses, as defined in Section 29-2-40.
10. Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
11. Accessory buildings and uses required for and clearly incidental to the principal building or use are permitted.
12. Those uses allowed by right under Section-29-6.

C Uses by Special Permit

The following uses are only allowed by Special Permit, granted by the Board of Appeals:

1. Subsidized elderly housing.
2. Commercial marina for the sale, mooring, and rental of boats.
3. Private, non-commercial stable.
4. Hotel or motel.

5. Restaurant selling food for consumption entirely on the premises.
6. Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term commercial-indoor recreation does not include those uses regulated by M.G.L. Chapter 140, Section 183A. (Rev. 5-20-93)
7. Animal hospital or commercial kennel, provided that such use shall not be within 200 feet of any residential district and the kennel area shall be completely enclosed by a solid wall or fence.
8. Auto body or paint shop; vehicle repair garage excluding the repair of heavy motorized equipment and the open storage of inoperable equipment, provided that such use shall be permitted upon the approval of a Special Permit therefor by the Board of Appeals. Review shall follow the procedural requirements in Section 29-28.C. Special attention should be given to possible adverse noise, odor, or visual effects of the use upon the surrounding neighborhood. Proper screening and buffering should be provided to eliminate undesirable adverse effects.
9. Warehouses; including mini-storage warehouses, where all storage is indoors, bottling plant, frozen food locker, ice manufacturing plant, wholesale establishment, and similar distribution center.
10. Open storage of new building materials, machinery and metal products, but not including junk, scrap, metal, wastepaper, and similar used materials; provided that the area is enclosed within a wall, solid fence, or compact evergreen hedge at least six (6) feet in height. (Rev. 6-26-87)
11. Essential public services such as transformer stations! substations, pumping stations, automatic telephone exchanges not including outdoor vehicle or equipment storage.
12. Parking lots or garages as principal use of the lot.
13. Pork-Chop lots on streets in existence prior to December, 1984, subject to the provisions of section 29-5.1. above.
14. Bed and breakfast establishments. (Rev. 3-19-91)
15. Those uses, including accessory uses, allowed by special permit under Section 29-6.
16. Commercial mobile radio service transmission facilities, structures, and/or towers (Ord. No. 115, 6-11-96)

D Building and Area Requirements

1. Minimum lot area: 2 acres
2. Maximum lot coverage: 40%, no more than 60% including parking.
3. Minimum lot frontage: 225 feet
4. Minimum front yard setback: 30 feet, 150 feet for buildings and for parking which abut Residential Districts.
5. Minimum side yard setback: 20 feet
6. Minimum rear yard setback: 25 feet
7. Maximum building height: 60 feet

E Parking Requirements

1. Off-street parking shall be in accordance with the requirements set forth in Section 29-24 below.

F Sign Requirements

1. All signs in the IR District shall conform to the regulations set forth in Section 29-25 below.

Special Requirements

1. Screening of conflicting uses - at the time of occupancy of a new non-residential use, or the expansion of the outside outline of an existing non-residential use of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an "R" District or use.

This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view, any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a Special Permit or site plan review is required, the Planting Plan shall be considered in this review.

Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this ordinance, and shall be subject to the enforcement procedures contained herein. (Rev. 6-26-87)

APPENDIX F

SITE PLAN APPROVAL ZONING PROVISIONS – SECTION 29-29.C

Section 29-29.C

C Site Plan Review Requirements for Certain Commercial, Industrial and Multi-Family Developments (whole section amended as of 11/21/88)

1. Projects requiring site plan review are listed in Tables I and II below. Table I lists those projects involving new construction which are subject to site plan review. Table II lists those projects involving expansion of existing structures which are subject to site plan review. In addition, any project granted a Special Permit for additional building height by the Planning Board in accordance with Section 29-17.D.2, 3, or 5 shall be subject to site plan review.

TABLE I: NEW CONSTRUCTION

Zoning Classification	Building Size Requiring Site Plan Review
IG	5,000 sq. ft. (Rev. 7-1-92)
IR	25,000 sq. ft. or more than one (1) structure on a lot
CG	Lot coverage over 65%
CC	1,000 sq. ft.
CN	1,000 sq. ft.
BHD	1,000 sq. ft. (Rev. 7-1-92)
HD	5,000 sq. ft. (Rev. 7-1-92)
Multi-family	Over ten (10) units; more than two (2) townhouses or similar building type on a single lot

TABLE II: EXPANSION CONSTRUCTION

Zoning Classification	Percent Increase in Gross Square Footage Requiring Site Plan Review
IG-zoned buildings over 10,000 sq. ft.	30%
IR-zoned buildings over 25,000 sq. ft. or more than one structure on a lot	30%
CG-zoned buildings with total lot coverage exceeding 65%	1%
CC-zoned buildings over 1,000 sq. ft.	40%
CN-zoned buildings over 1,000 sq. ft.	40%
WD-zoned buildings over 5,000 sq. ft.	20% (Rev. 7-1-92)
HD-zoned buildings over 5,000 sq. ft.	20% (Rev. 7-1-92)
Multi-family buildings over ten (10) units, or more than two (2) townhouses or similar building type on a lot	20%

2. Procedure - Applicants shall submit to the Planning Board five (5) copies of an application for site plan review and five (5) sets of plans. The applicant shall also file one (1) copy of the site plan review application with the City Clerk.

An application for site plan review shall also be accompanied by the following:

- a. A list of the names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan review application and plan;
- b. A filing fee of seventy-five dollars (\$75.00); and
- c. Written permission from the owner of the property to apply for site plan review, if the applicant is not the owner.

At least seven (7) days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by mail to all abutters.

Final action on the site plan shall be taken by the Planning Board after a public hearing has been held and within sixty-five (65) days of the date of the public hearing.

All applications for site plan review shall be forwarded to both the Parking and Traffic Commission and the Design Review Board for their comments and recommendations. The recommendations of this Board and Commission shall be received by the Planning Board within thirty (30) days of submission to the Board/Commission. Failure to forward comments within thirty (30) days will be deemed conclusion of review by the Design Review Board or the Parking and Traffic Commission. All applications for site plan review will also be forwarded to the City Engineer for his review and approval.

Failure of the Planning Board to act within sixty-five (65) days of the public hearing shall be deemed as conclusion of review and it shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect. The Planning Board shall communicate to the appropriate municipal officials and to applicant the results of its review.

The Planning Board may waive any of the requirements of this Section if deemed in the best interest of the City to do so.

3. Contents of plan - A plan accompanying an application for site plan review shall be drawn to whatever scale necessary to show clearly all site features, and shall include or be accompanied by the following:

- a. A locus map drawn at a scale of 1" = 800';
- b. The location and name of all streets in the immediate vicinity of the proposed project with a notation as to whether the street is a public or private right-of-way;
- c. Zoning and Historic District boundary lines;
- d. Existing and proposed contour lines at one (1) or two (2) foot intervals;

- e. The location and dimensions of all existing and proposed buildings on the site, and on abutting properties; elevation and facade treatment plans of all proposed-buildings and signs;
- f. Information on the location, size, and capacity of existing and proposed utilities which will service the project (water, sewer, electric, etc.) as well as hydrant location(s), and design plans and specifications/information for HVAC equipment and other noise emitting equipment proposed on the roof of the building(s) or elsewhere on site;
- g. Information on the method of surface and subsurface drainage disposal; location, type, and intensity of lighting; location, size, type, and number of existing and proposed landscape features; location and dimensions of signage; location of waste and refuse disposal facilities, and snow removal plans for the property post construction, and adequacy of same;
- h. Calculations of amount of parking required, and the location, size, and type of parking, loading and unloading, and service areas;
- i. Information sufficient to demonstrate that satisfactory arrangements will be made to facilitate traffic movement to, from, and within the site, such arrangements to be subject to the review and approval of-the Parking and Traffic Commission ("sufficient information" may require the submission of a traffic study); and
- j. Any additional data (including but not limited to drainage studies, demographic studies, shadow studies, etc.) which the Planning Board may deem necessary to evaluate the proposed project as it relates to surrounding areas, anticipated traffic and public safety and the intent of the Comprehensive Plan and this Ordinance.

APPENDIX G

INFORMATION ON CONCEPT OF LOW IMPACT DESIGN TOOLS AND TECHNIQUES

Low impact development is a way to protect the environment and reduce construction costs at the same time. Conventional design and construction methods generally use expensive systems of curbs, gutters, pipes, and ponds to collect, treat, and control site runoff. In contrast, the low impact development approach to site design and construction uses a more decentralized method of collecting, treating, and controlling site runoff; the concept is to reduce the amount of runoff and treat it closer to the source using smaller, less expensive techniques. Basic design strategies seek to reduce the extent of rooftops and paved areas, use water infiltration techniques such as bioretention area and grass swales, and design the site to protect natural features that improve water quality. Important low impact development techniques include measures such as green roofs, vegetative swales, grassed filter strips, permeable pavement, and infiltration trenches and dry wells.

The benefits of low impact development accrue to both the community and to the developer. For the City, benefits include:

- Lessening stress on watersheds by recharging aquifers;
- Reducing demand on the public stormwater infrastructure system, lessening combined sewer overflows and expenditures for maintenance and improvements; and
- Creating healthier surface water courses by naturally removing sediments and pollutants and helping to prevent flooding, erosion, and alteration of natural habitat.

From the developers' perspective, incorporating low impact development techniques into site design will:

- Lower site development costs by using less costly construction elements such as swales, grass filter strips, and bioretention areas;
- Create more attractive and higher value developments as a result of less site disturbance which preserves mature trees and uses open areas for low impact development measures;
- Provide less costly and simpler long term maintenance of drainage systems; and
- Lessen community opposition to a development project by providing a more attractive and acceptable site design and better protection of the existing environment.

The City of Beverly encourages prospective respondents to incorporate the maximum number of LID elements into all site designs. Detailed information on typical low impact development techniques can be found on the pages that follow. For additional information, email www.mapc.org/lid.

The information in this appendix was excerpted from the Massachusetts Low Impact Development Toolkit, a publication of the Metropolitan Area Planning Council in coordination with the I-495 Metrowest Corridor Partnership, with financial support from the US Environmental Protection Agency. The Massachusetts Low Impact Development Interagency Working Group also provided valuable input and feedback on the LID toolkit.

APPENDIX H

RECOMMENDED ARCHITECTURAL DEVELOPMENT GUIDELINES

Building Massing and Form

- (a) The architectural character of all buildings shall be of high quality and shall be compatible with the site and neighboring buildings in the Garden City Business Park;
- (b) Roofs which are architecturally integrated are acceptable and sloped roofs are encouraged to highlight building entries, to break up flat roof areas, and to screen rooftop mechanical equipment;
- (c) Vertical roof projections such as towers, vents, stacks, and roof-mounted equipment shall be avoided to the extent practicable. Major projections shall be integrated within the architectural form of the building and screened from view by parapet walls or screening; and
- (d) Unusual structures, roof forms, and signs which draw unnecessary attention to the building are discouraged.

Building Exterior Materials

- (a) One dominant wall material shall be used. Materials which convey permanence, substance, timelessness, and restraint shall be encouraged such as brick, granite, and architectural grade poured and cast concrete. Simple and uniform texture patterns are encouraged to create shadow patterns;
- (b) Sloped roof treatments shall be finished with high quality traditional roofing material which may include standing seam metal roofing. Corrugated metal or fiberglass panels and asphalt or rubber rolled roofing shall not be used on any roof which is visible from the ground;
- (c) Colors of wall materials and roofing shall be subdued in tone. Accent colors may be used to express identity but variations shall be kept to a minimum;
- (d) Pre-engineered, pre-manufactured metal buildings (including butler-type) should be avoided; and
- (e) Industrial type structures featuring predominantly painted exteriors should be avoided.”

Appendix I

PURCHASE AND SALE AGREEMENT

Dated _____, 20

1. PARTIES AND MAILING ADDRESSES

THE CITY OF BEVERLY, a municipal corporation, having an address of 191 Cabot Street, Beverly, MA 01915,

hereinafter called the SELLER, agrees to SELL and _____

having an address of _____

hereinafter called the BUYER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION

A parcel of land consisting of approximately 4 acres, more or less, situated at the corner of L. P. Henderson Road and Sam Fonzo Drive, Beverly, Massachusetts [Title Reference: Essex South District Registry of Deeds, Book _____, Page _____] (the "Premises").

3. TITLE DEED

Said Premises are to be conveyed by good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, from encumbrances, except

- (a) Provisions of existing building and zoning laws;
- (b) Existing rights and obligations in party walls which are not the subject of written agreement;
- (c) Such taxes for the then current fiscal year that are not due and payable on the date of the delivery of such deed;
- (d) Any liens for municipal betterments assessed after the date of this agreement; and
- (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or unreasonably interfere with the BUYER's development of said Premises in accordance with the Buyer's proposal in response to the RFP.

4. PLANS

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

5. **REGISTERED TITLE**

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

6. **PURCHASE PRICE**

The agreed purchase price for said Premises is _____ (\$_____), of which

\$ _____ have been previously paid as a submission deposit with BUYER’s proposal for the Premises in response to City of Beverly RFP # _____ ;

\$ _____ have been paid as a deposit this day;

\$ _____ are to be paid at the time of delivery of the deed by IOLTA check or Federal wire transfer to an account designated by the SELLER.

_____ TOTAL
\$

7. **TIME FOR PERFORMANCE; DELIVERY OF DEED**

Such deed is to be delivered at noon on the date (as the same may be extended or accelerated, the “Closing Date”) on the thirtieth (30th) day after all Approvals (as defined in Paragraph 24 below) have been issued and all appeal periods regarding such Approvals have lapsed with no adverse appeals having been taken, or, if appeals have been taken, then within thirty (30) days after all appeals as to the Approvals have been disposed of in the Buyer’s favor and to the Buyer’s reasonable satisfaction; notwithstanding the foregoing, the BUYER shall have the right to accelerate the Closing Date and to close sooner, at the BUYER’s option, on thirty (30) days’ written notice to the SELLER. The BUYER, each party named in any appeals shall use diligent efforts to pursue or defend any such appeal. The City shall use reasonable efforts to defend any such appeal as need to protect its interests. The closing shall be held at City Hall, 191 Cabot Street, Beverly, MA 01915, unless otherwise agreed in writing between the parties. It is agreed that time is of the essence of this agreement.

8. **POSSESSION AND AS-IS CONDITION OF PREMISES**

Full possession of said Premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of delivery of the deed, said Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof expected, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in Paragraph 3 hereof. The BUYER shall be entitled personally to inspect said Premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

Notwithstanding anything contained herein to the contrary, the BUYER is satisfied with the condition of the Premises and the BUYER is purchasing the Premises in an "AS IS" condition, without warranty of any kind, either express or implied; and that the SELLER has made no warranty or representations whatsoever concerning the condition of the Premises or any other matter relating to the Premises on which the BUYER has relied except as may be expressly set forth in this Agreement. The provisions of this Paragraph shall survive the delivery of the Deed.

9. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM

If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make said Premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of up to sixty (60) days.

For the purpose of this Paragraph, "reasonable efforts" shall mean the expenditure of all amounts necessary to discharge all liens voluntarily placed on the Premises and all governmental liens.

10. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.

If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then unless Buyer acts in accordance with Paragraph 12 below, any payments made under this agreement shall be forthwith refunded on all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

11. BUYER'S ELECTION TO ACCEPT TITLE

The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to said Premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the Premises to their former condition, either (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration.

12. ACCEPTANCE OF DEED

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

13. USE OF MONEY TO CLEAR TITLE

To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or that provision for the prompt recording thereof is made at the time of closing in accordance with customary conveyancing practice and at Sellers' cost.

14. ADJUSTMENTS

Water and sewer use charges shall be adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed.

15. REAL ESTATE TAXES

BUYER shall make the payment required by Massachusetts General Laws Chapter 44, Section 63A at the time for performance. The deed shall recite that there has been full compliance with the provisions of said Chapter 44, Section 63A.

16. DEPOSIT

All deposits made hereunder shall be held in a non-interest bearing escrow account by the SELLER subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the SELLER shall retain all deposits made under this agreement pending instructions mutually given by the SELLER and the BUYER or by Order of a court of competent jurisdiction, beyond any applicable appeal period.

17. BUYER'S DEFAULT; DAMAGES

If the BUYER shall fail to perform the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages, together with the right to obtain all copies of Buyer's plans, permits, reports and studies performed on the Premises without recourse to BUYER as to the contents thereof and subject to use limitations imposed and copyright obligations in favor of the issuers, and the foregoing shall be the SELLER's sole remedy at law and in equity.

18. NO LIABILITY OF INDIVIDUALS

The persons signing this agreement on behalf of the SELLER and BUYER do so in a representative or fiduciary capacity, and only the principal or the estate represented shall be bound, and neither the person so executing, nor any official, member or manager of the Seller or Buyer or any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

19. WARRANTIES AND REPRESENTATIONS

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he/she relied upon any warranties or representations not set forth or incorporated in this

agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER: **NONE**.

20. CONSTRUCTION OF AGREEMENT

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

21. NOTICE

Whenever notice is given or required to be given by either of the parties hereto to the other, it shall be deemed to have been given when in writing and mailed by certified mail, return receipt requested, by express mail, hand-delivered, or by email transmission, addressed as follows:

if to the SELLER to: Michael P. Cahill, Mayor
City of Beverly
191 Cabot Street
Beverly, MA 01915
mayor@beverlyma.gov

with a copy to: Stephanie M. Williams, Esq.
City Solicitor
191 Cabot Street
Beverly, MA 01915
swilliams@beverlyma.gov

and to: Aaron Clausen, City Planner
191 Cabot Street
Beverly, MA 01915
aclausen@beverlyma.gov

if to the BUYER to:

with a copy to:

or to such other address as either party shall have last designated by like notice in writing. Notices given hereunder shall be effective upon receipt in the case of notices given by hand or e-mail transmission, and the earlier of the date of receipt or the first attempted delivery in the case of notices given by certified mail or express mail.

22. TITLE AND PRACTICE STANDARD

Any matter or practice arising under or relating to this Agreement which is the subject of a practice or title standard of the Massachusetts Real Estate Bar Association shall be governed by such standard to the extent applicable.

23. **NO BROKER**

Each of the BUYER and the SELLER hereby warrant and represent to the other that neither has dealt with any real estate broker or other person entitled to a commission in connection with the purchase of the Premises or in connection with this Agreement and the BUYER hereby agrees to indemnify and hold the SELLER other harmless from any loss, cost, damage and expense, including reasonable attorney's fees, incurred in connection with any claim for a broker's commission or finder's fee resulting from a failure of this warranty. The provisions of this Paragraph shall survive delivery of the Deed.

24. **PERMITS AND APPROVALS**

The BUYER is responsible for acquiring at its expense all necessary waivers, approvals and permits from appropriate regulatory agencies that may be needed for the Project defined below, including but not limited to the Beverly Zoning Board of Appeals, City Council, Conservation Commission and Planning Board, the Historic District Commission, various City departments and the State's Department of Environmental Protection, if applicable. The BUYER shall file all permit applications needed for the Project as soon as possible, and not later than 120 days, following execution of this Agreement. BUYER shall be obligated to proceed with due diligence in obtaining necessary permits and approvals and a Building Permit.

BUYER intends to develop the Premises into _____ as more particularly described in the BUYER's Response to the City of Beverly RFP #_____, dated _____ (collectively, the "Project"). The BUYER's obligations under this Agreement shall be contingent upon the BUYER's ability to obtain any and all final permit and approvals (collectively, the "Approvals") required for the BUYER's Project including, without limitation_____. The SELLER agrees to cooperate with the BUYER and the BUYER's agents and to execute any instruments or appear at any hearings that may be necessary or desirable to obtain the permit requirements and to fulfill the purposes of this Agreement.

25. **TERMINATION**

(a) If, despite BUYER's diligent efforts, any of the Approvals necessary to proceed with the Project in substantially the same manner as depicted and described in the BUYER's proposal in response to RFP _____ or appeals thereof are pending without a final, favorable decision on _____ then the BUYER shall have the right to terminate this Agreement by written notice to SELLER whereupon all deposits hereunder shall be refunded to the BUYER and this Agreement shall be void and without further recourse to the parties hereto.

(b) Either party may terminate this agreement if the BUYER has not obtained the aforementioned Approvals within three (3) years of the date of execution of this Agreement; provided that if any of the Approvals have been issued favorably to BUYER but are the subject of ongoing appeal, then the SELLER shall not have the right to terminate so long as the BUYER diligently opposes such appeal. In such case, the SELLER has the right to opt to cease to prosecute or defend any appeal. In the event of termination under this subparagraph, all deposits hereunder shall be refunded to the BUYER and this Agreement shall be void and without further recourse to the parties hereto.

26. **ACCESS**

The SELLER hereby grants permission to the BUYER and the BUYER's agents, consultants and designees to enter upon the Premises during the term of this Agreement to conduct such surveys, inspections, soil and percolation and other tests that the BUYER may elect to perform in connection with its due diligence review and permitting efforts, or otherwise. All such tests, inspections and access shall be at the BUYER's sole risk, cost, expense and liability and the BUYER agrees to indemnify, defend and hold the SELLER harmless from any claim, liability or expense arising out of same, and to promptly restore the Premises to its former condition after completion of such tests.

27. **SELLER'S REPRESENTATIONS**

SELLER hereby represents that it has the authority to enter into this agreement and perform without the need for approval from any other person, entity, court or government, or in the alternative has received such approval.

28. **BUYER'S AUTHORITY**

The BUYER hereby represents that: (a) the BUYER is a _____ with full legal authority to enter into this transaction and to fulfill its obligations hereunder; (b) the person executing this Agreement on behalf of BUYER is an authorized signatory of the BUYER and has been duly authorized by all necessary action of BUYER; and (c) the BUYER and the persons signing on its behalf have been authorized by all necessary persons to enter into and deliver this Agreement and carry out the transaction contemplated hereby. No person whose consent is required for BUYER's execution of this Agreement or for BUYER to fulfill its obligations hereunder is under any legal disability.

29. **NON-ASSIGNABILITY**

This Agreement may not be assigned by the BUYER without the prior written consent of the SELLER and any purported assignment in violation of this provision shall be null and void. If the BUYER purports to assign this Agreement, then, at the Seller's option, this Agreement shall terminate and all deposits hereunder shall be paid to the SELLER and become the SELLER's property as liquidated damages, which shall be the SELLER's sole and exclusive remedy except as otherwise specifically set forth in this Agreement. Notwithstanding the foregoing, the SELLER shall not withhold consent to an assignment of this Agreement by the BUYER to any parent, affiliate or subsidiary of the Borrower.

30. **AGREEMENT NOT TO BE RECORDED**

If the BUYER records this Agreement or a copy hereof, this Agreement shall, at the SELLER's option, terminate and all deposits hereunder shall be paid to the SELLER and become the SELLER's property as liquidated damages, which shall be the SELLER's sole and exclusive remedy, except as otherwise specifically set forth in this Agreement.

31. **AUTHORIZATION TO SIGN MODIFICATIONS AND NOTICES**

In order to facilitate the execution and delivery of certain documents contemplated hereby, the SELLER and BUYER grant to their respective lawyers the actual authority to execute and deliver

on each party's behalf any (a) agreement modifying the time for the performance of any event hereunder, or (b) any notice that may be given under this agreement, and the parties may rely upon the signature of such lawyers (including faxed or email signatures) unless they have actual knowledge that a party has disclaimed the authority granted herein.

32. COUNTERPARTS AND FACSIMILE

This Agreement may be executed in several counterpart copies, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signatures of each of the parties to one such counterpart signature page. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page and facsimile signature pages followed by mailed copies of the originals are sufficient.

33. DISCLOSURE

BUYER has filed a disclosure statement with the Commissioner of Capital Asset Management and Maintenance pursuant to Massachusetts General Laws Chapter 7, Section 40J.

34. RFP DOCUMENTS

The parties agree that they intend to be bound in accordance with the terms set forth herein. Additionally, the BUYER agrees to develop and construct the Project in a manner that is in accordance with RFP _____ and its proposal in response thereto dated _____, subject to the BUYER's ability to obtain the required Approvals for the same on terms and conditions reasonably consistent with those outlined in RFP _____ and BUYER's proposal in response. BUYER's failure to use diligent efforts to obtain the Approvals for a project that is consistent with the terms of said RFP _____ and BUYER's proposal and/or Buyer's failure to develop or construct the project, and/or the declaration of bankruptcy by or insolvency of the BUYER, shall constitute a default under this Agreement and SELLER shall be entitled to terminate this Agreement if BUYER has not cured such default within sixty (60) days following notice thereof by SELLER. The BUYER'S duty to diligently and effectively pursue the permitting and construction phases of the Project shall survive the delivery of the deed

35. DEED EXCISE STAMPS

The SELLER is exempt from the payment of Deed Excise stamps at the time of the recording of the Deed.

[Signatures follow on next page.]

EXECUTED under seal as of the day and year first above written.

SELLER

BUYER

CITY OF BEVERLY, a
Massachusetts municipal corporation

By: _____
Michael P. Cahill, Mayor
Duly authorized

By: _____
Duly authorized