

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Finance Committee

Date: February 3, 2020

Time: 7:15 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2020 JAN 28 A 11:05

Additional Items Added to the Agenda:

2. 01-27-2020 – **Order No. 20-1007916:** Communication from the Mayor, regarding Transfer Request in the amount of \$3,029,000.00 for the design and construction of DEP corrective actions related to the Redevelopment of the Hudson Street Landfill.
-Refer to Finance Committee
3. 01-27-2020 – **Order No. 20-1007917:** Communication from the Mayor, regarding Transfer Request in the amount of \$400,000.00 from Stabilization-Open Space to Open Space Acquisition to fund the proposed acquisition of 45-47 and 55 Bolton Street (Map 57 Parcel 104 and Map 70 Parcel 296) and authorize the Mayor to enter into a purchase and sale agreement.
-Refer to Finance Committee

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.



IN CITY COUNCIL

Marlborough, Mass., JANUARY 27, 2020

ORDERED:

That the Transfer Request in the amount of \$3,029,000.00 for the design and construction of DEP corrective actions related to the Redevelopment of the Hudson Street Landfill, be and is herewith refer to **FINANCE COMMITTEE.**

CITY OF MARLBOROUGH BUDGET TRANSFERS --

DEPT: DPW

FISCAL YEAR: 2020

FROM ACCOUNT:

TO ACCOUNT:

Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$13,169,020.00	\$3,029,000.00	10000	35900	Undesignated Fund	\$3,029,000.00	19300006	55966	Capital Outlay-Hudson St Lan	\$0.00
		Reason: <u>Clean up of Hudson St Landfill for recreational purposes</u>							
	\$3,029,000.00	Total			\$3,029,000.00	Total			

ADOPTED

ORDER NO. 20-1007916



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610
www.marlborough-ma.gov

4

Arthur G. Vigeant
MAYOR
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
EXECUTIVE AIDE
2020 JAN 23 A 11:35
Patricia Bernard
EXECUTIVE SECRETARY

January 23, 2019

F/C

City Council President Michael H. Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

Re: Hudson Street Landfill Redevelopment

Honorable President Ossing and Councilors:

As you may know, the City of Marlborough was informed of a successful "Parklands Acquisition and Renovation for Communities" (PARC) Grant through the Commonwealth of Massachusetts for the redevelopment of the Hudson Street Landfill in 2015. This initiated a bond request to fund the redevelopment of the landfill for \$3,095,000.00 to complete the revitalization efforts and meet grant requirements.

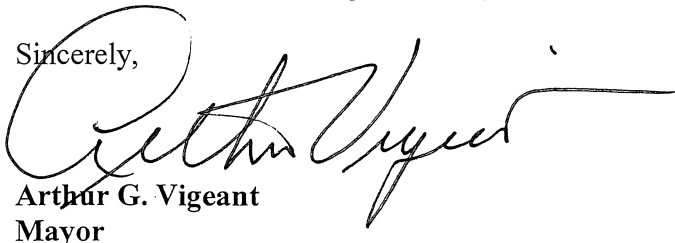
Unfortunately, when ensuring the site met the Department of Environmental Protection guidelines, we encountered several environmental health and safety concerns. Since then, we have performed a Comprehensive Site Assessment (CSA) and Corrective Actions Alternative Analysis (CAAA) for the site, which identified all deficiencies in the existing soil cap and mapped out a DEP approved plan to mitigate said deficiencies.

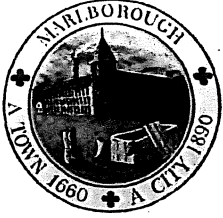
Per Commissioner Ghiloni's attached letter, the cost for the design and construction of the DEP corrective actions and preparing a portion of the site for active reuse would be \$3,029,000.00. I am enclosing for your approval a free cash transfer request for \$3,029,000.00.

If it is concluded that this parcel will never become a City of Marlborough Recreational Facility, we could feasibly reduce the amount to fund this project to \$2,000,000.00. However, I believe a recreational facility would be a wonderful use for this parcel of land.

Additionally, I intend to send you documentation revoking the bond authorization for the \$3,095,000.00 approved in 2015 in the upcoming weeks. Thank you in advance for your consideration. I look forward to discussing this with you further.

Sincerely,


Arthur G. Vigeant
Mayor



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

JOHN L. GHILONI
COMMISSIONER

Mayor Arthur G. Vigeant
City Hall
140 Main Street
Marlborough, MA 01752

Re: Hudson Street Landfill

Dear Mayor Vigeant:

The former Hudson Street Landfill ceased operation and was capped in the early 1980's. In 2015 the City evaluated the site for possible recreational use. During the development of concept plans, it was discovered that, while some periodic environmental monitoring had taken place over the years, strict regulatory compliance procedures to the level necessary under DEP regulations had not been performed.

This initiated the work of bringing the site into compliance with DEP Regulations. Over the past three years, we have performed a Comprehensive Site Assessment (CSA) and Corrective Actions Alternative Analysis (CAAA) for the site. The work has included extensive soil, groundwater, and surface water monitoring. The CSA has identified all deficiencies in the existing soil cap, and the CAAA has evaluated the actions necessary to correct them. Both analyses have been approved by DEP.

The cost for the design and construction of the required corrective actions is estimated at \$2,029,000. This is the cost required to bring the site into full compliance with DEP Regulations. Ongoing long-term soil and groundwater monitoring will also be required.

The additional cost required to prepare a portion of the site for some sort of active re-use, if that option is still desirable, is estimated at \$1,000,000.

I am seeking a funding request in the amount of \$3,029,000 for the site to be fully compliant and useable for future projects.

Thank you for your consideration.

Sincerely,

John L. Ghiloni
Commissioner

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: DPW

FISCAL YEAR: 2020

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$13,169,020.00

\$3,029,000.00

10000

35900

Undesignated Fund

\$3,029,000.00

19300006

55966

Capital Outlay-Hudson St Landf

\$0.00

Reason:

Clean up of Hudson St Landfill for recreational purposes

Reason:

Reason:

Reason:

\$3,029,000.00

Total



\$3,029,000.00

Total

Department Head signature:

Auditor signature:

Comptroller signature:



IN CITY COUNCIL

Marlborough, Mass., JANUARY 27, 2020

ORDERED:

That the Transfer Request in the amount of \$400,000.00 from Stabilization-Open Space to Open Space Acquisition to fund the proposed acquisition of 45-47 and 55 Bolton Street (Map 57 Parcel 104 and Map 70 Parcel 296) and to grant authorization to the Mayor to enter into a purchase and sale agreement, be and is herewith refer to **FINANCE COMMITTEE.**

Councilor Dumas Recused

CITY OF MARLBOROUGH BUDGET TRANSFERS --

DEPT:		Mayor				FISCAL YEAR:		2020	
FROM ACCOUNT:						TO ACCOUNT:			
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available
Balance									Balance
<u>\$539,397.80</u>	<u>\$400,000.00</u>	<u>83600</u>	<u>32918</u>	<u>Stabilization-Open Space</u>	<u>\$400,000.00</u>	<u>19300006</u>	<u>58170</u>	<u>Open Space Acquisition</u>	<u>\$0.00</u>
Reason:		<u>For purchase of Bolton Street property</u>							
	\$400,000.00	Total			\$400,000.00	Total			

ADOPTED

ORDER NO. 20-1007917



City of Marlborough Office of the Mayor

140 Main Street
Marlborough, Massachusetts 01752
508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlborough-ma.gov

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
MAYOR
2020 JAN 23 A 11:35
Nathan R. Boudreau
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

*F/C
(Dummi - Rows)*

January 23, 2020

City Council President Michael H. Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Acquisition of 45-47 and 55 Bolton Street, Marlborough
Assessor Map #57-104 and Map 70-296

Dear President Ossing and Councilors,

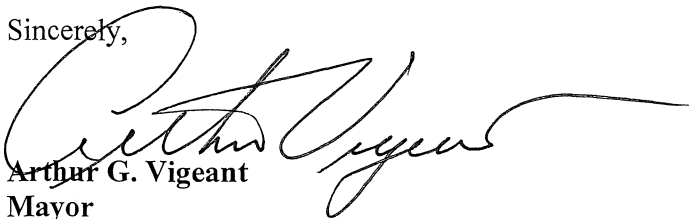
I respectfully submit this request for City Council approval of the proposed acquisition of the above-referenced two (2) parcels of land on Bolton Street, across from the DEC building.

The above-identified parcels are uniquely situated as the land is within a short walking distance near the existing DEC building. These Bolton Street parcels can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands. Enclosed please find the letter from Chief Procurement Officer Beverly Sleeper regarding why the proposed purchase constitutes a unique acquisition under procurement law.

The attached order fully authorizes the acquisition of these two parcels for a total combined purchase price of \$400,000.00 and allows me to enter into a purchase and sale agreement for each parcel. To fund the purchase, the proposed order includes a transfer of \$400,000.00 from Open Space Stabilization. With your approval, I anticipate the City of Marlborough being able to acquire these parcels in early 2020, which will allow for additional parking at the DEC building.

I am available to discuss this acquisition with you further. If you have any questions, please do not hesitate to contact me.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosures

ORDERED:

Pursuant to MGL c. 30B, § 16(e)(2), the City Council determines that advertising for the proposed purchase of the following two (2) parcels of land will not benefit the City's interest because of the unique qualities and location of the properties:

A parcel identified on the Assessors Map of the City of Marlborough as Map 57 Parcel 104 containing 0.26 acres, more or less, located at 55 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 100. The person(s) having a beneficial interest in this parcel is 55 Bolton Street LLC;

A parcel identified on the Assessors Map of the City of Marlborough as Map 70 Parcel 296 containing 0.27 acres, more or less, located at 45-47 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 080. The person(s) having a beneficial interest in this parcel is Bolton-Goodale LLC.

The above-identified parcels satisfy the requirements of said M.G.L. c. 30B, § 16(e)(2), because: the land is uniquely located within a short walking distance in close proximity to the existing DEC building across Bolton Street which can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands.

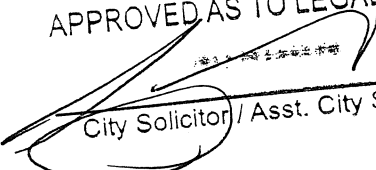
And further, that the Mayor is authorized to negotiate and enter into a purchase and sales agreement to acquire said parcels, for a total combined purchase price of \$400,000.00, subject to the following conditions: (i) that, in accordance with M.G.L. c. 43, § 30, the purchase price of any parcel shall not be more than 25% higher than the average assessed value of the parcel during the previous three years; and (ii) that the City's performance under any purchase and sales agreement will be contingent upon a favorable vote of the City Council authorizing the appropriation of sufficient funds for the purchase of the parcel. The Mayor is authorized to accept a deed pursuant to M.G.L. c. 40, § 3 for each parcel.

Pursuant to Mass. Gen. Laws c. 43, § 30 and c. 40, § 5B, the City Council, by a two-thirds vote of all its members, hereby authorizes an appropriation from Stabilization – Open Space (account # 83600-32918) in the amount of \$400,000.00 as sufficient funds to pay for the purchase of said parcels.

ADOPTED
In City Council
Order No. 20-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

APPROVED AS TO LEGAL FORM:

City Solicitor / Asst. City Solicitor

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2020

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$539,397.80

\$400,000.00

83600

32918

Stabilization-Open Space

\$400,000.00

19300006

58170

Open Space Acquisition

\$0.00

Reason:

For purchase of Bolton Street property

Reason:

Reason:

Reason:

Reason:

\$400,000.00

Total


\$400,000.00


Total

Department Head signature:

Auditor signature:

Comptroller signature:







City of Marlborough

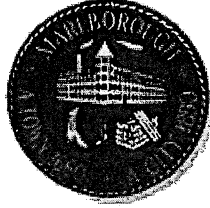


DEC Center and Vacant Parcels



1 inch = 100 feet

City of Marlborough



PROCUREMENT OFFICE

140 Main Street, 3RD Floor, Marlborough, MA 01752

DIRECT DIAL (508) 460-3707 FACSIMILE (508) 460-3747 TDD (508) 460-3610

BSLEEPER@MARLBOROUGH-MA.GOV

January 10, 2020

Arthur G. Vigeant, Mayor
City Hall
140 Main Street
Marlborough, MA 01752

RE: Unique Acquisition of Real Property – Additional DEC Off-Street Parking off Bolton Street

Dear Mayor Vigeant:

Pursuant to the provisions of M.G.L. c. 30B, § 16, the City must solicit proposals prior to obtaining real property valued in excess of \$35,000 *unless* the City Council determines in writing that advertising for the submissions of proposals will not benefit the City's interests because of the unique qualities or location of the property needed (M.G.L. c. 30B, § 16(e)(2)). It is my understanding that the City is interested in acquiring two (2) vacant parcels of land off Bolton Street, located within close proximity to the existing Marlborough Public Schools District Education Center (DEC), identified as follows:

Parcel 1 identified on the Assessors Map of the City of Marlborough as Map 57 Parcel 104 containing 0.26 acres, more or less, located at 55 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 100. The person(s) having a beneficial interest in this parcel is 55 Bolton Street LLC;

Parcel 2 identified on the Assessors Map of the City of Marlborough as Map 70 Parcel 296 containing 0.27 acres, more or less, located at 45-47 Bolton Street, Marlborough, MA, and further identified in a deed recorded in the Middlesex South District Registry of Deeds at Book 64292, Page 080. The person(s) having a beneficial interest in this parcel is Bolton-Goodale LLC.

Page 2

Letter to Mayor RE: Additional DEC Off-Street Parking
January 10, 2020

The parcels remain privately-owned and are uniquely located within a short walking distance to the existing DEC building across Bolton Street which can be utilized to increase off-street parking as DEC currently does not have enough parking to meet present or future demands. This acquisition would also provide an additional municipal parking lot within the City of Marlborough.

For the City Council's deliberation and approval, I have determined that the locations and/or qualities of the Land satisfy the unique requirements of the City pursuant to M.G.L. c. 30B, § 16(e)(2). Specifically, the Land is uniquely situated because it lies within close walking distance to the existing DEC building and will provide additional off-street parking. The only way to increase needed parking is to purchase parcels uniquely located either adjacent to or within close proximity to the existing DEC site.

In light of the foregoing, it is my opinion that it is proper to waive the advertisement requirements of M.G.L. c. 30B, § 16 with respect to the acquisition of the Land. Pursuant to M.G.L. c. 30B, § 16, I will schedule publication of this determination along with the names of parties having a beneficial interest in the property as required under M.G.L. c. 7C, § 38, the location and size of the property, and the proposed purchase price in the Commonwealth's Central Register not less than thirty (30) days before the City enters into a binding agreement with the current owners to purchase real property identified above under a unique acquisition determination.

If you have any questions or require further information, please let me know.

Sincerely,



Beverly J. Steeper
Chief Procurement Officer

cc: John L. Ghiloni, DPW Commissioner/Public Facilities Director
Michael Bergeron, Superintendent of Marlborough Public Schools
Douglas Dias, Director of Finance & Operations of Marlborough Public Schools
Jason Grossfield, City Solicitor

PURCHASE AND SALE AGREEMENT

This 17 day of JANUARY 2020.

1. PARTIES: BOLTON-GOODALE LLC, a Massachusetts limited liability company with a mailing address of 154 North Avenue, Weston, Massachusetts hereinafter called the SELLER, agree to sell, and CITY OF MARLBOROUGH, a municipal corporation with a principal place of business at 140 Main Street, Marlborough, Middlesex County, Massachusetts 01752, hereinafter called the BUYER, agrees to buy, upon the terms and conditions hereinafter set forth, the following described premises:
2. DESCRIPTION: Land identified as 45-47 Bolton Street, Marlborough, MA 01752 and shown as Parcel 296 on Assessors' Map 70, containing 0.27 acres, more or less, and the buildings and improvements thereon. For further description, see deed recorded with Middlesex South Registry of Deeds in Book 64292, Page 080 (hereinafter, the "Premises" or "premises").
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES: Included in the sale as a part of said premises and improvements thereon, the buildings, structures, fixtures, including, if any, gates, trees, shrubs, plants.
4. TITLE DEED: Said premises are to be conveyed by a good and sufficient Quitclaim Deed (hereinafter, "the Deed") running to the BUYER, and said deed shall convey a good and clear title thereto, free from encumbrances, except for:
 - (a) Provisions of existing building and zoning ordinances;
 - (b) Any existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
 - (d) Any liens for municipal betterments assessed after the date of this Agreement; and
 - (e) Easements, covenants, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for municipal purposes, or purposes appurtenant thereto.

BUYER, at its sole expense, may elect to obtain an owner's policy of title insurance with respect to the Premises and SELLER agrees to cooperate with BUYER and the Title Company to facilitate the issuance of such policy, provided that such

cooperation does not require the SELLER to incur any additional expenses and/or to accept any additional or increased liability.

5. PLANS: If said deed refers to a plan necessary to be recorded therewith, the BUYER shall be responsible for such plan with the Deed in form adequate for recording or registration. The survey for said plan will be at BUYER'S expense.
6. PURCHASE PRICE: The agreed purchase price for said premises, subject to BUYER'S contingencies in this Agreement, shall be \$200,000.00 (hereinafter, the "Purchase Price"). The Purchase Price shall be due and payable on the Closing Date as provided in paragraph 7 and 8 herein.

\$200,000.00 is to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, bank check, wire transfer, City of Marlborough check, or attorney's clients' trust account check.

\$200,000.00 Total

7. BUYER'S CONTINGENT PERFORMANCE

- (a) BUYER'S obligations and performance, including without limitation the purchase obligations, under this Agreement shall be contingent upon a vote of the Marlborough City Council (the "City Council") to (i) approve the subject purchase at the Purchase Price, and (ii) an appropriation of said Purchase Price, no later than March 6, 2020. In the event that the City Council does not approve said purchase or appropriate said Purchase Price, this Agreement shall automatically terminate and be null and void, without recourse to either party, and any deposits made hereunder shall be refunded forthwith.

8. CLOSING:

- a) Subject to the foregoing provisions, final settlement of the parties' purchase and sale obligations hereto, including but not limited to delivery of the deed, shall occur at 10:00 A.M. on the thirtieth (30th) day from said vote of the City Council, or if said date is a Saturday, Sunday or legal holiday, on the first business day thereafter, or as altered or extended by written agreement of the parties (hereinafter, "the Closing Date" or "date of closing"). Accordingly, neither the SELLER nor the BUYER shall be required to proceed with the closing for purchase of the Premises unless and until the City Council has authorized the purchase for the above-stated Purchase Price and appropriated said Purchase Price. In the event that the City Council votes to authorize the purchase and appropriate the Purchase Price, then the closing shall take place at Marlborough City Hall on the Closing Date unless otherwise agreed to by the parties in writing.
- b) Performance/Closing Condition – Simultaneous Closings Required for 45-47 and 55 Bolton Street. The SELLER and BUYER expressly acknowledge and agree that the purchase and sale of the Premises must occur simultaneously with the purchase and sale

of the property known as 55 Bolton Street, Marlborough, MA which is the subject to a separate purchase and sale agreement between the BUYER and the seller of said property. The Closing Date for both properties shall occur simultaneously, and there shall be no obligation to close on one property without closing at the same time on the other property.

- c) Expenses and Prorations: Real estate taxes on the Premises, which shall be paid by SELLER, shall be prorated as of the day of Closing based upon the latest available tax bill. SELLER shall pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises and SELLER shall pay the cost of recording the municipal lien certificate. BUYER shall pay all costs associated with recording of the Deed and cost of BUYER's title policies, if any. Each party shall be responsible for their own legal expenses. Any payments or expenses due by SELLER at time of Closing shall be made by certified or bank check only.
- d) On the Closing Date, BUYER'S attorney shall record the municipal lien certificate and the Deed and deliver to the appropriate parties all closing documents. It is agreed that the BUYER'S attorney shall have no liability to the SELLER for the performance of services in relation to the purchase and sale of the Premises, and that the performance of said services by BUYER's attorney does not constitute an attorney-client relationship between SELLER and BUYER'S attorney. SELLER agrees to pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises. Each party shall be responsible for his/her/its own legal expenses.
- e) Before the Closing Date, BUYER shall have complied with the provisions of chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act) for acquisition of real property.
- f) Buyer's Deliveries. At closing, BUYER shall execute and/or deliver to SELLER the following: Purchase Price.
- g) Seller's Deliveries. In addition to the Deed, SELLER shall deliver to BUYER in advance of the Closing, as a condition of BUYER'S obligations under this Agreement, the following, in forms acceptable to BUYER:
 - i) IRS Form W-9, Taxpayer Identification Number and Certification (delivered to BUYER no later than 21 days before Closing Date);
 - ii) Certificate of Non-Foreign Status pursuant to IRS Code 26 CFR 1.1445;
 - iii) Disclosure Statement for Transaction with a Public Agency Concerning Real Property pursuant to M.G.L. c. 7C, § 38 (delivered at time of execution of this Agreement);
 - iv) Tax Attestation Form pursuant to M.G.L. c. 62C, § 49A (delivered at time of execution of this Agreement);
 - v) Municipal Lien Certificate from the City of Marlborough's Collector;
 - vi) Closing Statement counterpart;

- vii) Owner's affidavit in customary form used by BUYER's title company, if any, however SELLER shall not be required to indemnify any person or entity from any loss as it pertains to any title insurance policy said title insurance company may issue;
 - viii) Eminent domain release; and
 - ix) Any other instrument/document as BUYER may reasonably request, including without limitation, documents for purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Premises to BUYER in accordance with this Agreement.
9. POSSESSION, CONDITION OF PREMISES: Full possession of said premises is to be delivered at the time of the delivery of the Deed, said premises to be in the same condition as they are now, reasonable use and wear thereof excepted. The SELLER agrees to deliver the Premises at the time of delivery free of all personal property of SELLER not being conveyed to BUYER, including all motor vehicles, equipment, debris and trash upon the Premises. The BUYER shall be entitled to personally inspect said Premises prior to delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or make conveyance, or to deliver possession of the Premises all as herein stipulated, or if at the time of delivery of the Deed the Premises does not conform with the provisions hereof or is not completed, the SELLER shall use reasonable efforts to remove any defects in title, provided that SELLER shall not be required to spend in excess of \$1,000 (One thousand dollars) exclusive of voluntary encumbrances and attorney's fees, to delivery possession as provided herein, in which event the time for performance hereunder shall be extended, by written notice from the SELLER to the BUYER, for a period designated by SELLER in their sole discretion, not in excess of sixty (60) days, and if a shorter period than sixty (60) days is designated, SELLER may further extend the time for performance one or more times, by written notice from the SELLER to the BUYER, but in no event beyond such sixty (60) day period.
11. AUTHORIZATION TO EXTEND DEADLINES. BUYER and SELLER hereby authorize their respective attorneys (if any, as the case may be) to execute on their behalf any extensions to the time for buyer's contingency deadline, performance and any change of location and/or time of delivery of the Deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent of such extensions, that either party has disclaimed the authority granted herein to bind them. For the purposes of this Agreement, facsimile and pdf signatures shall be construed as original.
12. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.: If at the expiration of any such 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 for said Premises shall refuse to permit

the insurance proceeds, if any, to be used for such purposes, then BUYER's sole and exclusive rights shall be to elect either: (a) to require that any deposit made hereunder be forthwith refunded, whereupon the deposit shall be refunded with interest and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto; or, (b) at the Closing Date or any extended time for performance, BUYER shall accept such title and possession as the SELLER can deliver to the Premises in its then condition, and pay the Purchase Price with deduction as agreed upon by BUYER and SELLER, in which case the SELLER shall convey such title and deliver such possession.

13. 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 the said Premises in its then condition and to pay therefor 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 have 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; or
 - (b) if a holder of a mortgage in said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
14. ACCEPTANCE OF DEED: The acceptance of the Deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation of SELLER herein contained or expressed, except of this Agreement which expressly provide that any obligation of SELLER shall survive the Time of Closing, and such as are, by the terms hereof, to be performed after the delivery of said Deed.
15. USE OF PURCHASE 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 within a reasonable time following delivery of the Deed in accordance with prevailing conveyancing practices.
16. INSURANCE: Until delivery of the Deed at closing, SELLER shall maintain insurance on said Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Appropriate types of coverage and endorsements for the subject premises, including but not limited to fire and casualty	SELLER shall maintain coverage and endorsements in an amount sufficient to guarantee full replacement value
(b) Extended Coverage	Risk of loss to remain with SELLER until delivery, acceptance, and recording of Deed

Commencing with the Date of the Closing, the BUYER shall be responsible for maintaining insurance on the Premises.

17. ADJUSTMENTS: There shall be no adjustments of any kind or nature. SELLER shall be responsible for all real estate taxes, water and sewer charges, and outstanding financing relating to the property.
18. BROKER'S FEE: There will be no broker's fee involved with this transaction. If SELLER is represented by a real estate broker in connection with this Agreement and the transaction contemplated by this Agreement, SELLER agrees that SELLER shall be solely responsible for compensating such agent or broker in connection with same, and shall indemnify and hold harmless the BUYER from any claim or cause of action related to any such fee.
19. DEPOSIT: Any deposits made hereunder (if applicable) shall be made payable to the SELLER at the address first set forth above, and who shall hold said deposit in escrow subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. Said deposit shall be held in an interest-bearing escrow account or accounts with interest payable to the BUYER so long as BUYER does not default hereunder.
20. WARRANTIES AND REPRESENTATIONS: The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction, nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.
21. PROPERTY SOLD "AS IS": The Premises are being conveyed "AS IS" and as shown, and no representations have been made by the SELLER with regard to its condition except those contained in this Agreement; the BUYER and SELLER agree that they have incorporated into this Agreement their entire understanding and that no oral statement or prior written statement made by any of them or by any person extrinsic to this Agreement shall have any force and effect.

22. COMPLIANCE WITH LAWS: This Agreement is subject to compliance with any and all applicable requirements of the Massachusetts General Laws, Special Laws, regulations and the ordinances of the City of Marlborough relative to acquisition of land by the BUYER and to the sale of land by the SELLER. Pursuant to M.G.L. c. 43, § 30, the City is prohibited from purchasing land for a price more than twenty-five percent in excess of the average assessed valuation during the previous three years to purchase.
23. EMINENT DOMAIN TAKING TO CONFIRM & CLEAR TITLE: In addition to agreeing to obtain conveyance of the Premises by transfer of a deed from the SELLER hereunder, SELLER hereby assents and agrees to the City of Marlborough's adoption and recording of an eminent domain order of taking under chapter 79 of the Massachusetts General Laws, at the City's sole discretion, for the purposes of confirming and clearing title to the Premises. SELLER further agrees to accept one (\$1.00) dollar as adequate compensation and damages for said confirmatory taking, and agrees to execute a release for themselves, their successors and assigns releasing the City of Marlborough, its officials, employees and agents from all claims resulting from said taking, and waiving SELLER'S, their successors and assigns, right to appeal or contest said taking for any reason in any forum including without limitation for and right, if any, to relocation assistance under M.G.L. c. 79A. SELLER shall institute no action for assessment of damages or bring any action in the nature thereof subsequent to the recording of any order of taking by the BUYER hereunder. The provisions of this paragraph shall survive delivery of the Deed hereunder.
24. CONSTRUCTION OF AGREEMENT: This instrument, which may be executed in multiple counterparts, is to be governed and construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as SELLER, their obligation hereunder shall be joint and several. The headings used in the numbered paragraphs of this Agreement 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 thereto.
25. INSPECTION PROVISIONS: SELLER agree to allow BUYER access to and entry onto and/or into the Premises prior to the date of performance herein under the following terms and conditions:
- (a) BUYER shall give at least 72 hours' notice to the SELLER;
 - (b) BUYER shall not perform any work on the Premises including inspections or testing of any kind without written notice to the SELLER and receipt of written authorization from the SELLER which shall not be unreasonably withheld. BUYER shall have the right, from time to time, at BUYER's sole cost, without

material damage being imposed upon the Premises and remaining unrepaired, to enter upon the premises to make, or cause to be made, inspection, engineering and development findings in respect thereto, including (without limitation) the making of tests to determine whether any portion of the Premises contains any hazardous substances under applicable laws. Upon determination that a hazardous substance is present on or in the Premises, BUYER may terminate this Agreement upon written notice to SELLER. In the event of any such termination, any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties shall cease and this Agreement shall be void without recourse to either party.

- (c) BUYER or BUYER'S agents, employees, licenses or contractors shall indemnify and hold SELLER harmless from any and all personal and/or property damage resulting from said access to and entry onto and/or into the Premises.

26. SELLER' COVENANTS: SELLER covenants and agrees as follows:

- (a) Henceforth through Closing, SELLER shall not consent to any request to make and/or extend any lease, contract, option or agreement affecting the Premises which would grant any third party any rights to such land, except with written consent of the BUYER;
- (b) Henceforth through Closing, SELLER shall not consent to any request or cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Premises, except with written consent of the BUYER;
- (c) Henceforth through Closing, with the exception of ordinary landscape maintenance, including but not limited to mowing of grass, raking leaves, and trimming of trees and shrubs, SELLER shall not consent to any request to erect any structures and/or remove any vegetation, soils or minerals from the Premises or to disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever, except with written consent of the BUYER; and
- (d) At or prior to the Closing, SELLER shall pay in full all outstanding amounts due to third parties arising from any work or services performed at or on the Premises by such third parties and in the event that any mechanics lien or materialmen's lien is filed by any such third party in connection with such work. SELLER hereby assent and agree to indemnify and hold harmless the City of Marlborough, its officials, employees and agents with respect to such claim.

Each of the above covenants is material and is relied upon by BUYER. Except insofar as SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of the closing and shall survive the Closing. If, before Closing, SELLER discover any information or facts that would

materially change the foregoing representations, SELLER shall immediately give notice to BUYER of those facts and information.

27. SELLER'S REPRESENTATIONS: SELLER represents and warrants to BUYER that:

- (a) SELLER has full power and authority to enter into this Agreement, and the person(s) signing this Agreement for SELLER have full power and authority to sign and bind SELLER to this Agreement;
- (b) There are no parties in possession of the premises, and no work has been done on the Premises which would entitle anyone to a mechanic's lien and or to file notice of contract relating to the premises as of the date of this Agreement;
- (c) The premises are not the subject of any outstanding agreements with any party pursuant to which any such party may acquire any interest in the premises. Neither the execution and delivery of this Agreement nor SELLER' performance of its obligations hereunder will constitute a breach or default under any agreement to which the SELLER are bound;
- (d) There here is no litigation or proceeding pending or threatened, that would affect a transfer of title to the Premises;
- (e) There is no evidence that Hazardous Substances, as defined herein, have been stored, generated, manufactured, disposed, transported or treated at or on the Premises. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance that may be classified as hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant under applicable federal, state or local laws, statute, ordinance, rule or regulation (hereinafter, "Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws;
- (f) During the SELLER' period of ownership of the Premises, SELLER have not used, nor will it permit the use of by any other person or entity, any portion of the Premises for the purposes of storage, generation, manufacture, disposal, transportation or treatment of any Hazardous Substance under Applicable Laws which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws; and
- (g) There are no petitions in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or other action under Federal of State bankruptcy laws pending against or contemplated by SELLER.

Each of the above representations is material and is relied upon by BUYER. Except in so far as the SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall

survive the Closing. If, before Closing, SELLER discover any information or facts that would materially change the foregoing covenants, warranties or representations, SELLER shall immediately give notice to BUYER of those facts and information.

In the event of a breach of any representation set forth in this paragraph. prior to Closing, BUYER may elect either (i) to waive such breach and proceed to Closing with no reduction in the Purchase Price, or (ii) terminate this Agreement upon written notice to SELLER, in which case the parties shall have no further obligations under this Agreement other than those obligations, if any, that expressly survive the termination of this Agreement.

28. SELLER'S CLOSING STATEMENT

SELLER agrees to execute at the closing under oath to the BUYER or to any title insurance company issuing a policy to the BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the Premises; (2) SELLER has no knowledge of any work having been done on the Premises which would entitle anyone now or hereafter to claim a mechanics or materialmens' lien on the Premises; and (3) SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

29. REMEDIES:

- a. Seller's Failure to Perform. In addition to any other remedy provided for in this Agreement, in the event of SELLER's failure to perform any of SELLER's obligations under this Agreement, BUYER shall have: (i) the right to waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, or (ii) the right to terminate this Agreement upon written notice to SELLER with any deposits returned to BUYER upon such termination, in which case the parties shall have no further obligations under this Agreement except for those obligations, if any, which expressly survive the termination of this Agreement.
- b. Buyer's Failure to Perform. In the event of BUYER's failure to perform any of BUYER's obligations under this Agreement, SELLER shall have as its sole remedies: (i) the right to waive such failure or breach and proceed to Closing without adjustment to the Purchase price, or (ii) retain any deposit made hereunder, either of which shall be SELLER's sole and exclusive remedy.

30. TITLE STANDARD: Any title matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of The Real Estate Bar Association for Massachusetts, Inc. at the time for delivery of the Deed shall be governed by such standard to the extent applicable.

30. NOTICE: Whenever, by the terms of this agreement, notice shall or may be given either to BUYER or to SELLER, such notice shall be deemed to have been given only

if in writing and either delivered by hand or sent by registered or certified mail, postage prepaid, if intended for the BUYER, to:

Arthur G. Vigeant, Mayor
City of Marlborough
140 Main Street
Marlborough, MA 01752

with copy to:

City Solicitor
City of Marlborough
140 Main Street
Marlborough, MA 01752

and, if intended for the SELLER, to:

Andrew J. Clavette, Esq.
Maher + Spang, P.C.
8 Winchester Place, Suite 306
Winchester, MA 01890
617-627-9600 (ph)
617-627-9602 (fax)
aclavette@maherandspang.com

or such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when deposited in the mail within the continental United States.

31. NEXT BUSINESS DAY: If the period by which any right, option or election must be exercised, or by which any act must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, Federal or Commonwealth of Massachusetts holiday, such time shall automatically extend through the close of business on the next business day.
32. BINDING ON SUCCESSORS: This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.
33. APPLICABLE LAW: This Agreements shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.
34. ENTIRE AGREEMENT; MODIFICATIONS; WAIVER: This Agreement constitutes the entire agreement between BUYER and SELLER pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or

amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

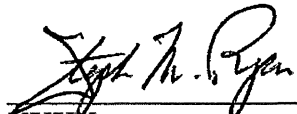
35. COUNTERPARTS: This Agreement may be signed and delivered in counterparts with the same effect as if each party had signed and delivered the same copy. When each party has executed and delivered a counterpart, all counterparts together constitute one Purchase and Sale Agreement. A copy of the executed Agreement that has been faxed or sent electronically shall have the same force and effect as the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

UPON SIGNING THIS DOCUMENT WILL BECOME A LEGALLY BINDING AGREEMENT, IF NOT UNDERSTOOD, SEEK ADVICE FROM AN ATTORNEY.

SELLER:

BOLTON-GOODALE LLC


XXXX

Date: 1-17-20

BUYER:

THE CITY OF MARLBOROUGH
BY ITS DULY AUTHORIZED MAYOR:

Arthur G. Vigeant, Mayor,
and not his individual capacity

Date: _____

PURCHASE AND SALE AGREEMENT

This 17 day of January, 2020.

1. PARTIES: 55 BOLTON STREET, LLC, a Massachusetts limited liability company with a mailing address of 70 Hope Avenue, Apt. 513, Waltham, Massachusetts hereinafter called the SELLER, agree to sell, and CITY OF MARLBOROUGH, a municipal corporation with a principal place of business at 140 Main Street, Marlborough, Middlesex County, Massachusetts 01752, hereinafter called the BUYER, agrees to buy, upon the terms and conditions hereinafter set forth, the following described premises:
2. DESCRIPTION: Land identified as 55 Bolton Street, Marlborough, MA 01752 and shown as Parcel 104 on Assessors' Map 57, containing 0.26 acres, more or less, and the buildings and improvements thereon. For further description, see deed recorded with Middlesex South Registry of Deeds in Book 64292, Page 100 (hereinafter, the "Premises" or "premises").
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES: Included in the sale as a part of said premises and improvements thereon, the buildings, structures, fixtures, including, if any, gates, trees, shrubs, plants.
4. TITLE DEED: Said premises are to be conveyed by a good and sufficient Quitclaim Deed (hereinafter, "the Deed") running to the BUYER, and said deed shall convey a good and clear title thereto, free from encumbrances, except for:
 - (a) Provisions of existing building and zoning ordinances;
 - (b) Any existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
 - (d) Any liens for municipal betterments assessed after the date of this Agreement; and
 - (e) Easements, covenants, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of said premises for municipal purposes, or purposes appurtenant thereto.

BUYER, at its sole expense, may elect to obtain an owner's policy of title insurance with respect to the Premises and SELLER agrees to cooperate with BUYER and the Title Company to facilitate the issuance of such policy, provided that such

cooperation does not require the SELLER to incur any additional expenses and/or to accept any additional or increased liability.

5. PLANS: If said deed refers to a plan necessary to be recorded therewith, the BUYER shall be responsible for such plan with the Deed in form adequate for recording or registration. The survey for said plan will be at BUYER'S expense.
6. PURCHASE PRICE: The agreed purchase price for said premises, subject to BUYER'S contingencies in this Agreement, shall be \$200,000.00 (hereinafter, the "Purchase Price"). The Purchase Price shall be due and payable on the Closing Date as provided in paragraph 7 and 8 herein.

\$200,000.00 is to be paid at the time of delivery of the deed by certified, cashier's, treasurer's, bank check, wire transfer, City of Marlborough check, or attorney's clients' trust account check.

\$200,000.00 Total

7. BUYER'S CONTINGENT PERFORMANCE

- (a) BUYER'S obligations and performance, including without limitation the purchase obligations, under this Agreement shall be contingent upon a vote of the Marlborough City Council (the "City Council") to (i) approve the subject purchase at the Purchase Price, and (ii) an appropriation of said Purchase Price, no later than March 6, 2020. In the event that the City Council does not approve said purchase or appropriate said Purchase Price, this Agreement shall automatically terminate and be null and void, without recourse to either party, and any deposits made hereunder shall be refunded forthwith.

8. CLOSING:

- a) Subject to the foregoing provisions, final settlement of the parties' purchase and sale obligations hereto, including but not limited to delivery of the deed, shall occur at 10:00 A.M. on the thirtieth (30th) day from said vote of the City Council, or if said date is a Saturday, Sunday or legal holiday, on the first business day thereafter, or as altered or extended by written agreement of the parties (hereinafter, "the Closing Date" or "date of closing"). Accordingly, neither the SELLER nor the BUYER shall be required to proceed with the closing for purchase of the Premises unless and until the City Council has authorized the purchase for the above-stated Purchase Price and appropriated said Purchase Price. In the event that the City Council votes to authorize the purchase and appropriate the Purchase Price, then the closing shall take place at Marlborough City Hall on the Closing Date unless otherwise agreed to by the parties in writing.
- b) Performance/Closing Condition – Simultaneous Closings Required for 45-47 and 55 Bolton Street. The SELLER and BUYER expressly acknowledge and agree that the purchase and sale of the Premises must occur simultaneously with the purchase and sale

of the property known as 45-47 Bolton Street, Marlborough, MA which is the subject to a separate purchase and sale agreement between the BUYER and the seller of said property. The Closing Date for both properties shall occur simultaneously, and there shall be no obligation to close on one property without closing at the same time on the other property.

- c) Expenses and Prorations: Real estate taxes on the Premises, which shall be paid by SELLER, shall be prorated as of the day of Closing based upon the latest available tax bill. SELLER shall pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises and SELLER shall pay the cost of recording the municipal lien certificate. BUYER shall pay all costs associated with recording of the Deed and cost of BUYER's title policies, if any. Each party shall be responsible for their own legal expenses. Any payments or expenses due by SELLER at time of Closing shall be made by certified or bank check only.
- d) On the Closing Date, BUYER'S attorney shall record the municipal lien certificate and the Deed and deliver to the appropriate parties all closing documents. It is agreed that the BUYER'S attorney shall have no liability to the SELLER for the performance of services in relation to the purchase and sale of the Premises, and that the performance of said services by BUYER's attorney does not constitute an attorney-client relationship between SELLER and BUYER'S attorney. SELLER agrees to pay all statutorily required transfer taxes or deed stamps relating to the sale of the Premises. Each party shall be responsible for his/her/its own legal expenses.
- e) Before the Closing Date, BUYER shall have complied with the provisions of chapter 30B of the Massachusetts General Laws (the Uniform Procurement Act) for acquisition of real property.
- f) Buyer's Deliveries. At closing, BUYER shall execute and/or deliver to SELLER the following: Purchase Price.
- g) Seller's Deliveries. In addition to the Deed, SELLER shall deliver to BUYER in advance of the Closing, as a condition of BUYER'S obligations under this Agreement, the following, in forms acceptable to BUYER:
 - i) IRS Form W-9, Taxpayer Identification Number and Certification (delivered to BUYER no later than 21 days before Closing Date);
 - ii) Certificate of Non-Foreign Status pursuant to IRS Code 26 CFR 1.1445;
 - iii) Disclosure Statement for Transaction with a Public Agency Concerning Real Property pursuant to M.G.L. c. 7C, § 38 (delivered at time of execution of this Agreement);
 - iv) Tax Attestation Form pursuant to M.G.L. c. 62C, § 49A (delivered at time of execution of this Agreement);
 - v) Municipal Lien Certificate from the City of Marlborough's Collector;
 - vi) Closing Statement counterpart;

- vii) Owner's affidavit in customary form used by BUYER's title company, if any, however SELLER shall not be required to indemnify any person or entity from any loss as it pertains to any title insurance policy said title insurance company may issue;
 - viii) Eminent domain release; and
 - ix) Any other instrument/document as BUYER may reasonably request, including without limitation, documents for purpose of confirming proper and lawful execution and delivery of closing documents and conveyance of the Premises to BUYER in accordance with this Agreement.
9. POSSESSION, CONDITION OF PREMISES: Full possession of said premises is to be delivered at the time of the delivery of the Deed, said premises to be in the same condition as they are now, reasonable use and wear thereof excepted. The SELLER agrees to deliver the Premises at the time of delivery free of all personal property of SELLER not being conveyed to BUYER, including all motor vehicles, equipment, debris and trash upon the Premises. The BUYER shall be entitled to personally inspect said Premises prior to delivery of the Deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM: If the SELLER shall be unable to give title or make conveyance, or to deliver possession of the Premises all as herein stipulated, or if at the time of delivery of the Deed the Premises does not conform with the provisions hereof or is not completed, the SELLER shall use reasonable efforts to remove any defects in title, provided that SELLER shall not be required to spend in excess of \$1,000 (One thousand dollars) exclusive of voluntary encumbrances and attorney's fees, to delivery possession as provided herein, in which event the time for performance hereunder shall be extended, by written notice from the SELLER to the BUYER, for a period designated by SELLER in their sole discretion, not in excess of sixty (60) days, and if a shorter period than sixty (60) days is designated, SELLER may further extend the time for performance one or more times, by written notice from the SELLER to the BUYER, but in no event beyond such sixty (60) day period.
11. AUTHORIZATION TO EXTEND DEADLINES. BUYER and SELLER hereby authorize their respective attorneys (if any, as the case may be) to execute on their behalf any extensions to the time for buyer's contingency deadline, performance and any change of location and/or time of delivery of the Deed. BUYER and SELLER shall be able to rely upon the signature of said attorneys as binding unless they have actual knowledge before the execution or other consent of such extensions, that either party has disclaimed the authority granted herein to bind them. For the purposes of this Agreement, facsimile and pdf signatures shall be construed as original.
12. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.: If at the expiration of any such 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 for said Premises shall refuse to permit

the insurance proceeds, if any, to be used for such purposes, then BUYER's sole and exclusive rights shall be to elect either: (a) to require that any deposit made hereunder be forthwith refunded, whereupon the deposit shall be refunded with interest and all other obligations of the parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto; or, (b) at the Closing Date or any extended time for performance, BUYER shall accept such title and possession as the SELLER can deliver to the Premises in its then condition, and pay the Purchase Price with deduction as agreed upon by BUYER and SELLER, in which case the SELLER shall convey such title and deliver such possession.

13. 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 the said Premises in its then condition and to pay therefor 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 have 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; or
 - (b) if a holder of a mortgage in said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
14. ACCEPTANCE OF DEED: The acceptance of the Deed by the BUYER shall be deemed to be a full performance and discharge of every agreement and obligation of SELLER herein contained or expressed, except of this Agreement which expressly provide that any obligation of SELLER shall survive the Time of Closing, and such as are, by the terms hereof, to be performed after the delivery of said Deed.
15. USE OF PURCHASE 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 within a reasonable time following delivery of the Deed in accordance with prevailing conveyancing practices.
16. INSURANCE: Until delivery of the Deed at closing, SELLER shall maintain insurance on said Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Appropriate types of coverage and endorsements for the subject premises, including but not limited to fire and casualty	SELLER shall maintain coverage and endorsements in an amount sufficient to guarantee full replacement value
(b) Extended Coverage	Risk of loss to remain with SELLER until delivery, acceptance, and recording of Deed

Commencing with the Date of the Closing, the BUYER shall be responsible for maintaining insurance on the Premises.

17. ADJUSTMENTS: There shall be no adjustments of any kind or nature. SELLER shall be responsible for all real estate taxes, water and sewer charges, and outstanding financing relating to the property.
18. BROKER'S FEE: There will be no broker's fee involved with this transaction. If SELLER is represented by a real estate broker in connection with this Agreement and the transaction contemplated by this Agreement, SELLER agrees that SELLER shall be solely responsible for compensating such agent or broker in connection with same, and shall indemnify and hold harmless the BUYER from any claim or cause of action related to any such fee.
19. DEPOSIT: Any deposits made hereunder (if applicable) shall be made payable to the SELLER at the address first set forth above, and who shall hold said deposit in escrow subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. Said deposit shall be held in an interest-bearing escrow account or accounts with interest payable to the BUYER so long as BUYER does not default hereunder.
20. WARRANTIES AND REPRESENTATIONS: The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction, nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement or previously made in writing.
21. PROPERTY SOLD "AS IS": The Premises are being conveyed "AS IS" and as shown, and no representations have been made by the SELLER with regard to its condition except those contained in this Agreement; the BUYER and SELLER agree that they have incorporated into this Agreement their entire understanding and that no oral statement or prior written statement made by any of them or by any person extrinsic to this Agreement shall have any force and effect.

22. COMPLIANCE WITH LAWS: This Agreement is subject to compliance with any and all applicable requirements of the Massachusetts General Laws, Special Laws, regulations and the ordinances of the City of Marlborough relative to acquisition of land by the BUYER and to the sale of land by the SELLER. Pursuant to M.G.L. c. 43, § 30, the City is prohibited from purchasing land for a price more than twenty-five percent in excess of the average assessed valuation during the previous three years to purchase.
23. EMINENT DOMAIN TAKING TO CONFIRM & CLEAR TITLE: In addition to agreeing to obtain conveyance of the Premises by transfer of a deed from the SELLER hereunder, SELLER hereby assents and agrees to the City of Marlborough's adoption and recording of an eminent domain order of taking under chapter 79 of the Massachusetts General Laws, at the City's sole discretion, for the purposes of confirming and clearing title to the Premises. SELLER further agrees to accept one (\$1.00) dollar as adequate compensation and damages for said confirmatory taking, and agrees to execute a release for themselves, their successors and assigns releasing the City of Marlborough, its officials, employees and agents from all claims resulting from said taking, and waiving SELLER'S, their successors and assigns, right to appeal or contest said taking for any reason in any forum including without limitation for and right, if any, to relocation assistance under M.G.L. c. 79A. SELLER shall institute no action for assessment of damages or bring any action in the nature thereof subsequent to the recording of any order of taking by the BUYER hereunder. The provisions of this paragraph shall survive delivery of the Deed hereunder.
24. CONSTRUCTION OF AGREEMENT: This instrument, which may be executed in multiple counterparts, is to be governed and construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as SELLER, their obligation hereunder shall be joint and several. The headings used in the numbered paragraphs of this Agreement 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 thereto.
25. INSPECTION PROVISIONS: SELLER agree to allow BUYER access to and entry onto and/or into the Premises prior to the date of performance herein under the following terms and conditions:
- (a) BUYER shall give at least 72 hours' notice to the SELLER;
 - (b) BUYER shall not perform any work on the Premises including inspections or testing of any kind without written notice to the SELLER and receipt of written authorization from the SELLER which shall not be unreasonably withheld. BUYER shall have the right, from time to time, at BUYER's sole cost, without

material damage being imposed upon the Premises and remaining unrepaired, to enter upon the premises to make, or cause to be made, inspection, engineering and development findings in respect thereto, including (without limitation) the making of tests to determine whether any portion of the Premises contains any hazardous substances under applicable laws. Upon determination that a hazardous substance is present on or in the Premises, BUYER may terminate this Agreement upon written notice to SELLER. In the event of any such termination, any payments made under this Agreement shall be forthwith refunded and all other obligations of the parties shall cease and this Agreement shall be void without recourse to either party.

- (c) BUYER or BUYER'S agents, employees, licenses or contractors shall indemnify and hold SELLER harmless from any and all personal and/or property damage resulting from said access to and entry onto and/or into the Premises.

26. SELLER' COVENANTS: SELLER covenants and agrees as follows:

- (a) Henceforth through Closing, SELLER shall not consent to any request to make and/or extend any lease, contract, option or agreement affecting the Premises which would grant any third party any rights to such land, except with written consent of the BUYER;
- (b) Henceforth through Closing, SELLER shall not consent to any request or cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Premises, except with written consent of the BUYER;
- (c) Henceforth through Closing, with the exception of ordinary landscape maintenance, including but not limited to mowing of grass, raking leaves, and trimming of trees and shrubs, SELLER shall not consent to any request to erect any structures and/or remove any vegetation, soils or minerals from the Premises or to disturb or suffer the disturbance of the existing contours and/or other natural features of the land in any way whatsoever, except with written consent of the BUYER; and
- (d) At or prior to the Closing, SELLER shall pay in full all outstanding amounts due to third parties arising from any work or services performed at or on the Premises by such third parties and in the event that any mechanics lien or materialmen's lien is filed by any such third party in connection with such work. SELLER hereby assent and agree to indemnify and hold harmless the City of Marlborough, its officials, employees and agents with respect to such claim.

Each of the above covenants is material and is relied upon by BUYER. Except insofar as SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of the closing and shall survive the Closing. If, before Closing, SELLER discover any information or facts that would

materially change the foregoing representations, SELLER shall immediately give notice to BUYER of those facts and information.

27. SELLER'S REPRESENTATIONS: SELLER represents and warrants to BUYER that:

- (a) SELLER has full power and authority to enter into this Agreement, and the person(s) signing this Agreement for SELLER have full power and authority to sign and bind SELLER to this Agreement;
- (b) There are no parties in possession of the premises, and no work has been done on the Premises which would entitle anyone to a mechanic's lien and or to file notice of contract relating to the premises as of the date of this Agreement;
- (c) The premises are not the subject of any outstanding agreements with any party pursuant to which any such party may acquire any interest in the premises. Neither the execution and delivery of this Agreement nor SELLER' performance of its obligations hereunder will constitute a breach or default under any agreement to which the SELLER are bound;
- (d) There here is no litigation or proceeding pending or threatened, that would affect a transfer of title to the Premises;
- (e) There is no evidence that Hazardous Substances, as defined herein, have been stored, generated, manufactured, disposed, transported or treated at or on the Premises. For the purposes of this Agreement, the term "Hazardous Substances" shall mean any substance that may be classified as hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant under applicable federal, state or local laws, statute, ordinance, rule or regulation (hereinafter, "Applicable Laws") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws;
- (f) During the SELLER' period of ownership of the Premises, SELLER have not used, nor will it permit the use of by any other person or entity, any portion of the Premises for the purposes of storage, generation, manufacture, disposal, transportation or treatment of any Hazardous Substance under Applicable Laws which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws; and
- (g) There are no petitions in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or other action under Federal of State bankruptcy laws pending against or contemplated by SELLER.

Each of the above representations is material and is relied upon by BUYER. Except in so far as the SELLER have advised BUYER in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall

survive the Closing. If, before Closing, SELLER discover any information or facts that would materially change the foregoing covenants, warranties or representations, SELLER shall immediately give notice to BUYER of those facts and information.

In the event of a breach of any representation set forth in this paragraph. prior to Closing, BUYER may elect either (i) to waive such breach and proceed to Closing with no reduction in the Purchase Price, or (ii) terminate this Agreement upon written notice to SELLER, in which caser the parties shall have no further obligations under this Agreement other than those obligations, if any, that expressly survive the termination of this Agreement.

28. SELLER'S CLOSING STATEMENT

SELLER agrees to execute at the closing under oath to the BUYER or to any title insurance company issuing a policy to the BUYER to the effect that: (1) there are no tenants, lessees or parties in possession of the Premises; (2) SELLER has no knowledge of any work having been done on the Premises which would entitle anyone now or hereafter to claim a mechanics or materialmens' lien on the Premises; and (3) SELLER is not a foreign person subject to the withholding provisions of the Internal Revenue Code of 1986, as amended (FIRPTA).

29. REMEDIES:

- a. Seller's Failure to Perform. In addition to any other remedy provided for in this Agreement, in the event of SELLER's failure to perform any of SELLER's obligations under this Agreement, BUYER shall have: (i) the right to waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, or (ii) the right to terminate this Agreement upon written notice to SELLER with any deposits returned to BUYER upon such termination, in which case the parties shall have no further obligations under this Agreement except for those obligations, if any, which expressly survive the termination of this Agreement.
- b. Buyer's Failure to Perform. In the event of BUYER's failure to perform any of BUYER's obligations under this Agreement, SELLER shall have as it sole remedies: (i) the right to waive such failure or breach and proceed to Closing without adjustment to the Purchase price, or (ii) retain any deposit made hereunder, either of which shall be SELLER's sole and exclusive remedy.

30. TITLE STANDARD: Any title matter or practice arising under or relating to this Agreement which is the subject of a title or practice standard of The Real Estate Bar Association for Massachusetts, Inc. at the time for delivery of the Deed shall be governed by such standard to the extent applicable.

30. NOTICE: Whenever, by the terms of this agreement, notice shall or may be given either to BUYER or to SELLER, such notice shall be deemed to have been given only

if in writing and either delivered by hand or sent by registered or certified mail, postage prepaid, if intended for the BUYER, to:

Arthur G. Vigeant, Mayor
City of Marlborough
140 Main Street
Marlborough, MA 01752

with copy to:

City Solicitor
City of Marlborough
140 Main Street
Marlborough, MA 01752

and, if intended for the SELLER, to:

Andrew J. Clavette, Esq.
Maher + Spang, P.C.
8 Winchester Place, Suite 306
Winchester, MA 01890
617-627-9600 (ph)
617-627-9602 (fax)
aclavette@maherandspang.com

or such other address or addresses as may be specified by either party to the other by like notice. All notices shall be effective when deposited in the mail within the continental United States.

31. NEXT BUSINESS DAY: If the period by which any right, option or election must be exercised, or by which any act must be performed, or by which the Closing must be held, expires on a Saturday, Sunday, Federal or Commonwealth of Massachusetts holiday, such time shall automatically extend through the close of business on the next business day.
32. BINDING ON SUCCESSORS: This Agreement shall be binding not only upon the parties, but also upon their respective heirs, personal representatives, assigns, and other successors in interest.
33. APPLICABLE LAW: This Agreements shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.
34. ENTIRE AGREEMENT; MODIFICATIONS; WAIVER: This Agreement constitutes the entire agreement between BUYER and SELLER pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom such supplement, modification, waiver or



amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

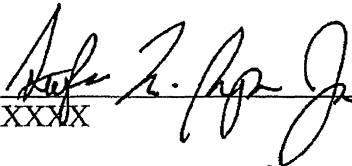
35. **COUNTERPARTS:** This Agreement may be signed and delivered in counterparts with the same effect as if each party had signed and delivered the same copy. When each party has executed and delivered a counterpart, all counterparts together constitute one Purchase and Sale Agreement. A copy of the executed Agreement that has been faxed or sent electronically shall have the same force and effect as the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

UPON SIGNING THIS DOCUMENT WILL BECOME A LEGALLY BINDING AGREEMENT, IF NOT UNDERSTOOD, SEEK ADVICE FROM AN ATTORNEY.

SELLER:

55 BOLTON STREET, LLC


XXXX

Date: 01-17-2020

BUYER:

THE CITY OF MARLBOROUGH
BY ITS DULY AUTHORIZED MAYOR:

Arthur G. Vigeant, Mayor,
and not his individual capacity

Date: _____

