

CITY OF NEWTON

IN BOARD OF ALDERMEN

November 2, 2015

That, pursuant to Section 2-7 of the Revised Ordinances of 2012, as amended, after a public hearing and upon recommendation of the Real Property Reuse Committee through its Chair Susan Albright, it is hereby

ORDERED:

That His Honor the Mayor be and is hereby authorized to lease the land commonly known as the former Health Department headquarters, located at 1294 Centre Street, containing approximately 16,160 square feet of land, identified as Section 61, Block 35, Lot 03, in Newton Centre, Ward 6, in a Public Use zoned district, and,

The property shall be leased, subject to the minimum financial terms and conditions as voted by the Honorable Board of Aldermen as set forth as follows:

TERMS OF LEASE

That the minimum price for the lease of the property shall be a market rate that reflects the preservation and use recommendations made below, and includes, at a minimum, the public benefits set forth in the resolution section of this Board Order.

FURTHER BE IT RESOLVED:

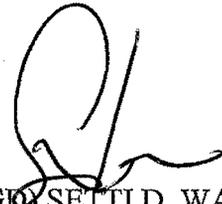
1. In recognition of the existing building's listing on the National Register of Historic Places, the lease shall require the lessee to
  - (a) preserve the building's major, historically significant features, as determined jointly by the Planning Department and the Public Buildings Department based on the building's CPA-funded 2012 historic building report ([www.newtonma.gov/civicax/filebank/documents/43545](http://www.newtonma.gov/civicax/filebank/documents/43545)), while also allowing for adaptive reuse in compliance with the Secretary of the Interior's Standards for Historic Rehabilitation ([www.nps.gov/tps/standards/rehabilitation.htm](http://www.nps.gov/tps/standards/rehabilitation.htm))
  - (b) maintain the building in compliance with federal rehabilitation standards.
2. That the use of the site shall include attractive indoor/outdoor gathering spaces and a place for public interaction and community use in the spirit of the former branch library.
3. That the use of the site shall enliven the site and block with uses that may include businesses that will provide activities during evening and weekend hours, contribute to Newton Centre's growth as a walkable village, and enhance community life in Newton Centre.

4. That the lessee shall be encouraged to incorporate the entire site, including landscape design, into a comprehensive plan that opens the site to promote connectivity with nearby open spaces.
5. That the property should be rezoned prior to the issuance of an RFP to an appropriate zone.
6. That the lessee shall prepare plans and submit applications to the appropriate Boards/Committees.
7. That the City shall provide sufficient information to the developer regarding the existing site conditions including, but not limited to, land surveying, contamination, adequacy of water and sewer services, and traffic data that may help determine the need for additional infrastructure improvements and/or development costs provided that the gathering of such information can be performed in-house and within existing departmental budgets.

Under Suspension of Rules  
Readings Waived and Approved  
22 yeas 0 nays 2 absent (Aldermen Fuller and Yates)



(SGD) DAVID A. OLSON  
City Clerk



(SGD) SETTI D. WARREN  
Mayor

DATE: 4/07/15

# Zoning Map 1294 Centre St.

City of Newton,  
Massachusetts

**Legend**

- Single Residence 2
- Multi-Residence 1
- Business 1
- Business 2
- Public Use
- Surface Water

**Attachment C**



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: October 19, 2016



DRAFT

**MEMORANDUM OF INTENT  
TO NEGOTIATE LAND LEASE**

This Letter of Intent (“MOI”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF NEWTON (the “City”), a political subdivision of the Commonwealth of Massachusetts, with an address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through its Mayor, but without personal liability to him, and \_\_\_\_\_, a duly organized \_\_\_\_\_, with an address of \_\_\_\_\_, (the “Designated Developer”) (together referred to as the “Parties”).

WHEREAS, the City has issued a Request for Proposal #17-29 (“RFP”) to lease as lessor a 0.37-acre (16,160 square feet) parcel of land improved with a former municipal branch library consisting of approximately 6,800 gross square feet (usable 1st floor area of approximately 4,200 square feet) with additional square footage in the basement suitable for storage, located at 1294 Centre Street, Newton, Massachusetts (the “Parcel”) for development as a Mixed Use Project in accordance with the Project Description contained in the RFP; and

WHEREAS, after evaluation of the Proposals submitted in response to the RFP by the Evaluation Committee and recommendation by the Committee and the Director of Planning and Development, the Mayor has determined that the Proposal submitted by the Designated Developer is the most advantageous proposal for the City; and

WHEREAS, the City and the Designated Developer recognize and acknowledge that the feasibility and scope of the Mixed Use Project proposed by the Designated Developer has not been determined to the satisfaction of the City, and the purpose of this MOI is to allow the City and the Designated Developer to undertake additional study, planning, and analysis to determine the feasibility and scope of the proposed Project and to negotiate the terms of a Land Lease for the Parcel consistent with the Proposal, including the Financial Proposal.

NOW, THEREFORE, the Parties agree as follows:

1. NEGOTIATIONS

- 1.1 Unless terminated earlier in accordance with this MOI, the period of negotiations between the Parties shall be sixty (60) days, commencing on the date of this MOI; provided, however, that the Negotiation Period may be extended as provided in this MOI.
- 1.2 Good Faith Negotiations. The City and the Designated Developer shall negotiate diligently and in good faith during the Negotiation Period toward a Land Lease (“Lease”) leasing the Parcel for a Mixed Use Project in accordance with the Project Description contained in the RFP for a sum equal to or exceeding the Financial Proposal. The Parties contemplate that the Lease will set forth the terms and conditions for the lease of the Parcel to the Designated Developer; include a conceptual description of the Project; and

include the timeline within which it shall be developed. Within fourteen (14) days from the date of execution of this MOI, the Parties agree to develop a mutually agreed upon schedule for negotiation of a Lease within the Negotiation Period, including dates by which the Designated Developer shall provide the City with any submittals deemed necessary by the City for negotiation of a Lease.

- 1.3 If the terms of a mutually satisfactory Lease have not been negotiated by the Designated Developer and the City during the Negotiation Period or any agreed upon extension thereof, or if the City, acting through the Mayor in his sole discretion, declines to approve the Lease for any reason, then, without further action, this MOI shall automatically terminate and neither Party shall have further rights or obligations to the other.
- 1.4 Exclusive Negotiations. The City shall not negotiate with any other person or entity during the Negotiation Period or any agreed upon extension thereof.

## 2. GOOD FAITH DEPOSIT

- 2.1 An RFP security in the amount of \$5,000 has been submitted to the City as part of the Designated Developer's Proposal. During the Negotiation Period, the RFP security shall be retained by the City, and the additional sum of \$5,000 shall be paid by the Designated Developer to the City, for a total of \$10,000, as a Good Faith Deposit without any obligation on the part of the City to pay interest thereon. If the Designated Developer and the City enter into a Lease for the Parcel, the Good Faith Deposit may be applied toward any deposit which shall be required under the Lease.
- 2.2 If the Designated Developer fails to reach agreement with the City, or the City, acting through the Mayor in his sole discretion, otherwise declines to enter into a Lease, the Good Faith Deposit shall be returned to the Designated Developer; provided, however, if, in the reasonable judgment of the Mayor, either the Designated Developer: a) failed to negotiate in good faith with the City; b) the Designated Developer failed to execute a mutually satisfactory Lease within the Negotiation Period or any agreed upon extension thereof; or 3) the City has terminated the MOI following a material default by the Designated Developer in accordance with the provisions of Section 4 herein, then the City may, in its sole discretion, retain the Good Faith Deposit. The Parties agree that it would be impractical to estimate the damages which the City may suffer in the event that the Designated Developer fails to meet its obligations herein. Therefore, the Parties do hereby agree that a reasonable estimate of the total net detriment the City would suffer in the event of the Designated Developer's default is and shall be the retention of the Good Faith Deposit as liquidated damages.

## 3. EFFECT OF NEGOTIATIONS

- 3.1 The Designated Developer understands and acknowledges that any Lease resulting from the negotiations arising from this MOI shall become effective only if and only after such Lease has been approved and executed by the Mayor. The Designated Developer understands that the Mayor retains the sole and absolute right to approve or not approve the sale of the Property.

If the terms of a mutually satisfactory Lease have not been negotiated by the Designated Developer and the City during the Negotiation Period, as it may be extended in writing by mutual agreement of the Parties, then, without further action, this MOI shall automatically terminate, and neither Party shall have further rights or obligations hereunder except with regard to the return or forfeiture of the Good Faith Deposit. If a mutually satisfactory Lease has been negotiated during the Negotiation Period, but has not been executed by either Party prior to the expiration of the Negotiation Period for whatever reason, then, without further action, this MOI shall automatically terminate, and neither Party shall have further rights or obligations hereunder except with regard to the return or forfeiture of the Good Faith Deposit.

#### 4. DEFAULT AND TERMINATION

- 4.1 Time of the Essence. Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this MOI shall be considered a material breach of this MOI.
- 4.2 Notice of Material Breach. In the event that either Party fails to perform a material obligation of such Party pursuant to the terms and conditions of this MOI within the time herein specified, the other Party shall promptly give the defaulting Party notice of such default. The defaulting Party shall have a period of ten (10) calendar days from receipt of such written notice within which to cure such default, or within such additional time as may be agreed upon by the Parties.
- 4.3 Termination Upon Default. If the defaulting Party fails to cure any material default during the cure period described above, this MOI shall be terminated upon delivery of a written notice of termination to the defaulting Party, and thereafter neither Party shall have any further rights or obligations under this MOI, except for the City's right to either retain or refund the Good Faith Deposit as more particularly described herein.

#### 5. LIMITATIONS

- 5.1 This MOI does not obligate the City to lease the Parcel to the Designated Developer or any other person, nor does it obligate the City to approve the Project or any other project. Any costs incurred by Designated Developer, Designated Developer's members or partners, or other members of the Project development team to comply with its obligations under this MOI or to negotiate the Lease shall be the sole responsibility of the Designated Developer, and in no event shall the City have any responsibility to pay for or reimburse the Designated Developer for any of said costs.
- 5.2 The Designated Developer understands and acknowledges that the City is subject to Massachusetts Open Meeting and Public Records laws, and that the City must make information regarding the Parcel, the Project, the Designated Developer, and this MOI available to the public upon request as required by said laws.

6. NO ASSIGNMENT

6.1 This MOI is personal to the Designated Developer and is not assignable to any other person or entity without the prior written consent of the City. Any attempt to assign this MOI or any part of the MOI without the prior written consent of the City shall constitute a breach of this MOI and shall be void and of no force and effect.

7. NOTICES

7.1 All notices under this MOI shall be sufficiently given if hand delivered, mailed by certified mail, postage prepaid, or by Federal Express delivery, addressed to:

DESIGNATED DEVELOPER:

CITY:

Written notice shall be deemed received and shall be effective upon actual receipt by the addressee.

8. GOVERNING LAW

8.1. This MOI shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, this MOI has been executed by the Parties as of the date first written above.

CITY OF NEWTON

By: \_\_\_\_\_  
Its: Mayor  
Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
City Solicitor

DESIGNATED DEVELOPER

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_