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To: Michael Glavin, Ed O'Donnell, Eileen McGettigan, Omar Boukili

From: Mark Niedergang, Ward 5 Alderman, Chair, BOA Committee on Housing and Community Development

Date: 10/22/15



Re: Questions about the Amended and Restated MDDA between the SRA and US2

As part of the discussion on item # 199896: "Discuss SRA Special Counsel conveying an Amended Master Developer Designation Agreement," I will be asking the following questions and will distribute this memo to attendees at the Housing & CD Cmte meeting on Weds, Oct 28th. I am providing the questions to you in advance as a courtesy and so that you can prepare answers if necessary.

- 1) Where does the "Baseline Project" buildout on D-2 figure of 711,000 gross square feet of floor area come from, what document? Please provide a copy of that document to the H&CD Committee. (The Master Developer RFQ says approximately 645,000 square feet and the Union Square Revitalization Plan says 645,947.)
- 2) How was the figure of 150,000 -- "of which a minimum of 150,000 gross square feet must be dedicated to retail and office use" of the 711,000 total (22%) -- developed, and why? Many residents engaged in the Union Square planning process and the Board of Alderman have expressed a strong preference for predominantly commercial development in the D-2 block.
- 3) Why does the 150,000 commercial square footage lump together retail and office use, given that office use generates substantially more tax revenue for the City and better-paying jobs, and why was research and development completely omitted?
- 4) Please give a rough ballpark estimate or range for the current value of the D-2 parcel based on SRA and City expenses and estimated fair market value and the current zoning. Are we talking around \$10 million or around \$40 million?
- 5) Why did the SRA not just require US2 to pay the fair market value of the D-2 parcel or the SRA's costs in acquiring it -- whichever is higher -- and have US2 assume the risk for permitting the project, which is how most property sales are done in Somerville? Why should the City assume the risks associated with zoning for the parcel, especially since neither the SRA nor the Administration can control the zoning decision, as that is up to the Board of Aldermen?
- 6) If the BOA passes zoning for D-2 that was to require a substantially higher percentage of commercial space than the 22% in the Baseline Project, would that affect the Adjusted D-2 Purchase Price and if so, how would it affect it?

- 7) If and when US2 purchases the D-2 block from the City, where do the funds it pays to the City go, under whose control will those funds be? Do the funds go into the SRA's account and would then be available for the SRA to use in Union Square as it wishes, do the funds go into the general fund expenditures from which require approval from the Board of Aldermen, or into some other account?

components of the Phase 2 Infrastructure Improvements no later than the occupancy of the first building phase of Parcel D-2 (currently anticipated to be mid-2018), recognizing that such infrastructure is essential for the construction of improvements on Parcel D-2.

(b) 90-92 Union Square. As part of the revitalization effort, the City will work with US2 to develop a plan for the redevelopment of the former fire station at 90-92 Union Square and the surrounding public plaza to serve as a public amenity for the Union Square area, which may include the sale or lease of the property to US2 for redevelopment, subject to Board of Aldermen approval, or other arrangement whereby US2 provides financial and other support in a public-private partnership agreement to be negotiated with the City. Any agreed-upon redevelopment plans or public-private partnership shall be carried out in a timeframe which complements US2's redevelopment of the Disposition Parcels. US2 will work with any current tenants of the site that would be displaced by the proposed redevelopment in an effort to relocate them to suitable locations in the Union Square area.

4. Parcel D-2 Option to Purchase. The SRA hereby grants US2 or an affiliate of US2 (collectively, the "**D-2 Developer**") an option to purchase Parcel D-2 on the terms set forth below (the "**Option**");

(a) Option Payment. Within five (5) business days following the date hereof, the D-2 Developer shall make a nonrefundable payment of \$50,000.00 to the City on behalf of the SRA as consideration for the SRA granting the D-2 Developer the Option (the "**Option Payment**").

(b) Exercise of the Option. Subject to the provisions of Subsection 4(c), the D-2 Developer may exercise the Option by providing written notice thereof to the SRA during the Option Period. For purposes of this paragraph, the "**Option Period**" shall be the period commencing on the date hereof and ending on the first to occur of (i) the date that is one hundred twenty (120) days following the D-2 Developer's receipt the D-2 Entitlements (hereinafter defined) and (ii) October 31, 2017. If after the expiration of the Exclusive Negotiating Period (as it may be extended) neither a Master Land Disposition Agreement nor a Parcel D-2 Land Disposition Agreement has been executed, the SRA may elect to terminate the Option.

(c) Conditions to Exercise of Option. The execution of either the Master Land Disposition Agreement or a Parcel D-2 Land Disposition Agreement and the approval thereof by DHCD shall be a pre-condition to US2's exercise of the Option. The Master Land Disposition Agreement or Parcel D-2 Land Disposition Agreement shall include a form of deed, with appropriate reverter provisions for failure to construct the applicable projects, reserved rights, and payment adjustments to the SRA in the event the D-2 Entitlements are received after the exercise of the Option and/or the SRA incurs additional costs of acquiring Parcel D-2 after the Close of Escrow (hereinafter defined).

(d) Closing. Upon US2's exercise of the Option, the Parties will open an escrow (the "**Escrow**") with an escrow company mutually acceptable to the parties (the "**Escrow Holder**") for the purpose of holding monies and closing the purchase and sale of the Property, subject to and in accordance with the Master Land Disposition Agreement or, as applicable, a Parcel D-2 Land Disposition Agreement. The closing of the purchase and sale of the Property is referred to herein as the "**Close of Escrow**." The Close of Escrow shall occur no later than ninety (90) days

after US2 exercises the Option. Following US2's exercise of the Option, the Parties shall enter into a written agreement confirming the date of the closing, the amount of the D-2 Purchase Price, the allocation of closing costs and preparation of closing documents and any other items related to the closing.

(e) Parcel D-2 Purchase Price. The purchase price of Parcel D-2 will be an amount equal to the sum of (i) the SRA's costs of acquiring the parcels which comprise Parcel D-2, including but not limited to any relocation and associated costs, and additional eminent domain damages awarded for any such parcel by a future court judgment pursuant to G.L. c. 79 (together with any interest accruing thereon and reasonable attorneys' fees and related costs and fees), (ii) the SRA's costs of conveying such parcel to Master Developer and (iii) the cost of any environmental remediation and/or site preparation performed on Parcel D-2 by the SRA except such costs that have been reimbursed by state agencies or other parties (collectively, the "**Base D-2 Purchase Price**"). The SRA agrees to provide a current listing of such costs and fees promptly after the date of this Agreement. The parties agree that the Base D-2 Purchase Price shall be adjusted as follows (the Base D-2 Purchase Price following such adjustment, the "**Adjusted D-2 Purchase Price**") to correspond to the actual entitlements and project approvals received by Master Developer after completion of the Neighborhood Plan and project approval processes (the "**D-2 Entitlements**"):

- (i) If the D-2 Entitlements provide for a project containing less permitted floor area than the Baseline Project, the Parties agree that the Adjusted D-2 Purchase Price shall be an amount equal to the lesser of (A) the Base D-2 Purchase Price or (B) the fair market value of Parcel D-2 with the D-2 Entitlements; or
- (ii) If the D-2 Entitlements provide for a project containing more permitted floor area than the Baseline Project, the Parties agree that the Base D-2 Purchase Price shall be increased proportionally such that the Adjusted D-2 Purchase Price shall be an amount equal to the Base D-2 Purchase Price multiplied by a fraction, the numerator of which shall be the permitted floor area under the D-2 Entitlements and the denominator of which shall be the floor area permitted under the Baseline Project. This subparagraph 4(e)(ii) shall also apply to any D-2 Entitlements unused by the Developer at the time of the exercise of the Option but which are subsequently used and/or transferred.

For purposes of this Agreement, "**Baseline Project**" shall mean a mixed-use residential and commercial project containing 711,000 gross square feet of floor area (including at grade or above ground structured parking) of which a minimum of 150,000 gross square feet must be dedicated to retail and office use. US2 shall receive a credit against the Base D-2 Purchase Price or the Adjusted D-2 Purchase Price, as applicable, in an amount equal to the Option Payment.

(f) Conditions of Development. The redevelopment of Parcel D-2 shall be subject to the terms and conditions of the Neighborhood Plan, the Public Benefits Agreement, and the Master Land Disposition Agreement (or, as applicable, a Parcel D-2 Land Disposition Agreement).

5. Coordination with MBTA