



CITY OF SOMERVILLE

Joseph A. Curtatone, Mayor

Office of Strategic Planning and Community Development (OSPCD)
City Hall 93 Highland Avenue Somerville, MA 02143
(617) 625-6600 ext.2500

Request for Proposals

RFP #13-57

Powder House Community School Property Disposition and Redevelopment



I. Project Summary

The City of Somerville (“City”) through its Purchasing Department, invites proposals from qualified applicants for the redevelopment of the former Powder House Community School (“Property”). The City seeks a qualified development team who can come to agreeable terms for purchase of the site and then work with the City and constituents on a development of highest and best use for the site while providing community benefits to residents and fiscal returns for the City.

It is the City’s intention, through the actions of the Board of Aldermen, to formally declare the property available for disposition in accordance with G.L.c. 30B, sec. 16, to set a minimum price, and to identify restrictions, (if any) on the future use of the property prior to the deadline for the submission of proposals.

All proposals will be evaluated by staff and the Powder House Technical Advisory Committee (“Committee”) who will make a recommendation to the Mayor for one development team (“Preferred Partner”) who secures the highest score on the scoresheet that is provided within this RFP. The scoresheet includes purchase price as one of many measures of success, but also requires a project with long-term fiscal return and a willingness to engage the community, meet the proposed standards and guidelines and produce a successful project.

II. Project Vision

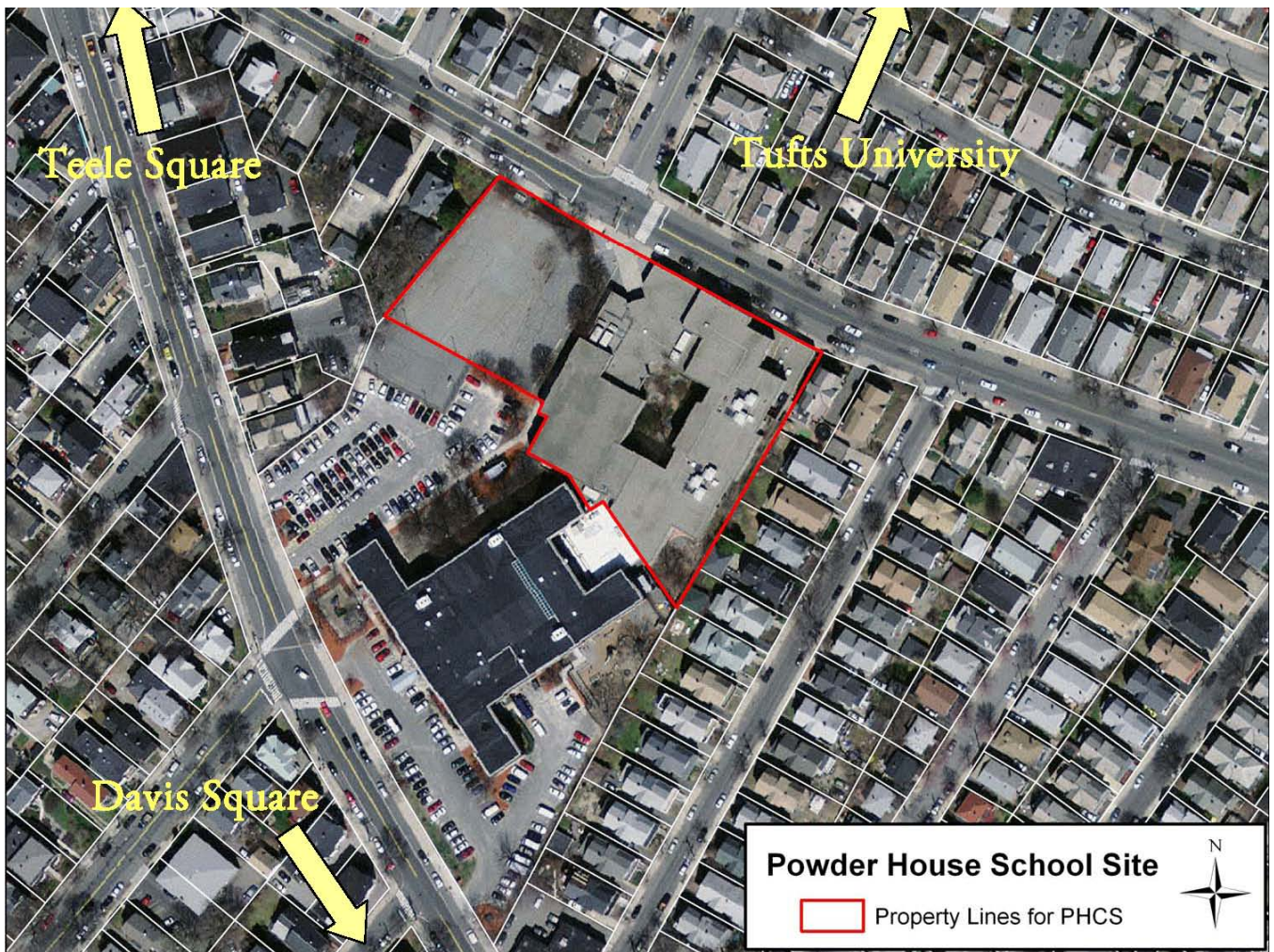
The City has engaged the community over the last two years in a visioning process that includes development standards and design guidelines for form, scale, and use of a future project. Additionally, OSPCD’s Planning Division has a draft Planned-Unit-Development – C (PUD-C) zoning overlay ready for adoption by the Board of Aldermen that captures the intention concluded from this extensive visioning process. The details of the standards and guidelines as well as the zoning draft can be found in **Appendix E**. The City will require the Preferred Partner to engage community in a design exercise that will aspire to refine the project to meet the intent of the visioning focus group.

Either the demolition or rehabilitation of the existing structure may be proposed. If the structure is demolished, a new structure or structures can be built up to a Floor Area Ratio (FAR) of 1.0 across the entire site (80,857 sqft) of development and occupy up to 60% of the surface area of the site. At least 40% of the site shall be maintained as publically accessible and useable open space, preferably in the form of one contiguous quality open space area. Applicants are requested to provide information about their proposed use and management of the open space and how that complements the use program on the site. The successful development of the site will bring high quality new uses to a vibrant residential neighborhood with excellent transit access that is situated at the edge of Teele Square and within close walking distance of Davis Square.

III. Project Information

A. Property Description

The property is a vacant school building with adjacent open paved areas, within close proximity to Teele and Davis Squares in Somerville. The property's structure contains 87,599 gross square feet of building area on a lot that is 80,857 square feet. This is a large desirable property in a sought-after neighborhood. The site can lend itself to a variety of uses, including office, institutional or residential, with or without street-front retail. The site is currently zoned Residence-A, but the City is expected to pursue a zoning amendment in conjunction with this process. A draft of that amendment, based upon current community feedback, is attached to this RFP in **Appendix E**. The Parcel available for disposition is identified in location maps in **Appendix A** and described in detail in **Appendix B**. The Assessment Report for the Property is available in **Appendix C** and Deed information is found in **Appendix D**.



B. Building History

The PHS was built in 1973 and is a multi-level building (two and three stories) including classrooms, a gymnasium, kitchen/cafeteria, atrium, and common space (bathrooms, hallways, storage, etc). Prior to 1973 the site was a school yard for an adjacent Junior High School.

The PHS was constructed as a K-8 community school to support an increasing population trend in the West Somerville area. By 2002, population growth had leveled off leaving the building considerably underutilized. For this reason, and due to the high cost of maintenance, the City decided to close its doors in 2004.

C. Neighborhood

The PHS is located between Davis and Teele Squares on Broadway serviced by the 89 and 90 bus lines. It is a 1/2 mile walk to Davis Square connecting the site with the red line and additional buses to Highland Avenue, Elm Street, Summer Street, and Union Square. Likewise, it is also a 1/2- mile walk to Powder House Circle connecting the site to additional buses up College Avenue, Broadway, and Medford Street.

Teele Square features several excellent restaurants and serves as a neighborhood that is more residential than nearby Davis Square. The combination of this district's location and public transit and pedestrian access makes this thriving "small town feel" neighborhood a popular spot for off-campus living for Tufts University students and faculty.

Davis Square is one of the city's most vibrant commercial districts. The combination of this district's location and public transit access has created a demand for a mix of local and regional service uses. In particular, Davis Square has become a regional dining and entertainment destination with some of the area's finest restaurants and live entertainment venues. Davis Square includes an independent cinema, a small live theater, multiple coffee houses, and a rapidly expanding mix of retail uses.

Nearby Davis Square is a regular destination for Tufts University students and faculty. Numerous software, marketing, and design firms have located their offices in and around Davis Square. The pedestrian scale of the Square combined with access to the Somerville Community Path and Minuteman Commuter Bikeway, which connects the western suburbs of Bedford, Lexington and Arlington to Davis Square, is an attraction for many residents and employees.

Property values and rents in the surrounding residential neighborhood have increased dramatically in recent years, an upturn which has led to considerable new investment.

D. Community Process

The Planning Division in the Office of Strategic Planning and Community Development undertook a two year community visioning focus group process to establish a future vision for disposition and development of the site. While the group had an extensive opportunity to provide input into a final zoning product that would reflect development on the site, the process was challenged with a number of common problems. While new Planned Unit Development (PUD) zoning can stipulate in detail the expected use, density and setbacks on a site, it does not guarantee a project that reflects community visioning. At the end of the focus group process, while the community had come to a shared vision on many key elements (a portion of the site as publicly accessible open space, need for modest development on the site, likelihood for a need to demolish the school building, etc.) they were unable to feel completely comfortable with the wide range of potential outcomes of the PUD Zoning process. Based upon this, Planning Division staff recommended a different strategy. The zoning has been completed, but not submitted. The underlying zoning on the site remains Residence-A. The draft of a

new PUD-C overlay that will foster agreed-upon development intensity is complete. Prior to submittal of the zoning, the City will use this RFP process to select a Preferred Partner and work with that partner to return to the community and establish the best way to implement the Partner's program while meeting the intent of the community process. Completion of this process should accelerate the zoning change and subsequent reviews. Knowing that collaboration will be the key to successful design, the City will score projects higher that provide a viable package of program and price, and provide a development team with a track record in community engagement and development.

E. Desired Outcome and Process

Based upon the community process, the City is now seeking a buyer for the site who will work with the City and community to refine and develop a plan for implementing their proposed program on the site. This plan development will incorporate a review of the site plan and design ideas in an interactive community process. This will be followed by submittal of the PUD-C zoning amendment (which can be further adjusted based upon the outcome of the community process) and subsequent filing of permit applications under the new zoning. Essentially, while the City is seeking a buyer and developer, the City needs this entity to bring with them a strong design and outreach team, and work with the City as a partner in developing the site. Also of paramount importance is the proposed long-term protection of on-site publicly accessible open space. This can take a lot of forms, both physically and from a land management perspective. The applicant must seek out a strategy to deliver and preferably maintain this quality space as a significant community benefit of the project.

F. Ownership / Title / Restrictions

The City is the owner of the Parcel and is not aware of any title encumbrance related to the Parcel other than the rights, easements, and restrictions specifically set forth in the deed, or otherwise described in particular **Appendix D**. In particular, the parcel is subject to a 7' pedestrian passageway easement, but the easement may be relocated as long as access through the site to Holland Street is maintained. Please see **Appendix D** for more details.

G. Valuation

The Board of Assessors has certified the assessment of the Property for the fiscal year 2013 at \$7,238,300. This value represents a land value of \$1,879,100 and a value of building improvements of \$5,359,200. The Board of Assessors Certification of Value is included in **Appendix C**.

H. Utilities

The Property is connected to the City's water system provided by MWRA.

Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Central
Heat/AC	HEAT/AC SPLIT

I. Environmental

The City has no environmental reports associated with the Parcel. The Massachusetts Department of Environmental Protection (“MassDEP”) maintains a database of MassDEP-listed properties online at <http://mass.gov/dep>. The Preferred Developer shall undertake site investigation and testing during the ENA period. It is incumbent upon the Preferred Developer to determine during the ENA period whether or not the Parcel will require remediation. If it does, the Preferred Developer shall be responsible for reporting and for all costs associated with the proper remediation of the Parcel for this use per MGL c. 21E and 310 CMR 40.0000 as administered by the Massachusetts Department of Environmental Protection (“MassDEP”). The Somerville Fire Chief has no record of underground storage tanks or other contamination on site and previous Sanborn maps show the school yard as early as 1900.

IV. Proposal Submission Requirements

One original and five (5) copies of the proposal must be submitted marked “Powder House Community School Proposal.” An electronic version of the complete proposal must be submitted on a CD-R or similar disk.

Proposals must be received at Office of the Purchasing Agent, City Hall, 93 Highland Avenue, Somerville, MA 02143 no later than **11:00am on Friday February 28th**, 2013. No faxed or electronically mailed (e-mailed) proposals will be accepted. Late submissions will not be accepted and will be returned to the Proposer unopened.

Complete Proposals shall include the following:

A. Letter of Transmittal

The Letter of Transmittal must include a brief summary of the Powder House Community School Proposal (“Project”) with the Applicant’s name, mailing address, contact person, telephone, fax number and email address. The letter must be signed by the proposer and addressed to Angela Allen, Purchasing Director, City Hall, 93 Highland Avenue, Somerville, MA 02143.

B. Statement of Qualification

Include the following:

1. The composition and structure of the development team including the developer, architect, landscape designer, engineer, project manager, licensed site professional (LSP), attorney, operator and any other key members of the development team;
2. The qualifications of the development team as they relate directly to designing, financing, constructing and operating urban infill projects and engaging in community design charrettes and/or other processes to establish mutual support for high quality design outcomes;
3. Resumes of key personnel on the development team;
4. If the Proposal includes combining the site for sale with adjacent or nearby private property for the purpose of development, include a signed approval letter from the private owner and a copy of the deed.

C. Comparable Projects & References

Include the following:

1. For the Developer, provide a written description of at least one (1) but not more than three (3), urban infill projects most similar to your vision for the Powder House Community School project that were completed within the past seven (7) years. List the projects’ location, size, ownership entity, community process, development costs, financing mechanism, any municipal subsidiary received, current status, and reference’s contact name and telephone number(s). If the applicant wants to include additional examples, list them with a web link to additional information;
2. For the Developer’s design team lead, provide a written description of at least one (1) but not more than three (3) projects with community engagement and design outcomes most similar to the strategy

for the Powder House Community School project that were completed within the past seven (7) years. List the projects' location, size, ownership entity, community process, development costs, financing mechanism, any municipal subsidiary received, current status, and reference's contact name and telephone number(s). If the applicant wants to include additional examples, list them with a web link to additional information;

3. Include a letter sized (8.5"x11") graphic representation of each project along with the written description of the development program (do not submit large-scale drawings);
4. Describe any "green" building design or management practices utilized;
5. Describe the development approach including the urban context, parking situations encountered, community process, development team integration, coordination among town/city/county officials, and community benefits and community impacts.

D. Project Narrative

Include the following:

1. Qualitative description of project including a detailed program of proposed uses;
2. One or more proposed site-plan options that can work for this program (this can be in a preliminary format . . . the site plans may change as the review process evolves);
3. A timeline for community process, zoning adoption, acquisition, construction and operation of the project that is within a window of three years from the date of transfer of title to the property;
4. Describe any other amenities including ancillary uses and public amenities and include their anticipated location on the Parcel;
5. Identify any proposed green building design elements, including level of LEED certification, as applicable;
6. Transportation demand management strategy, identification of the likely quantity of parking required by the developer and one or more preliminary proposed circulation plans.
7. Identification of any deviations from the proposed development standards and design guidelines in **Appendix E**.

E. Purchase Price

Include the following:

1. The offered purchase price for the Parcel;
2. A description of the breakdown of payment i.e. cash or a combination of cash and public amenities;
3. Any appraisal work done on the Property.

F. Financial Information

Include the following:

1. Provide the anticipated financial and management interests in the project;
2. Provide the strategy for securing financing;
3. Provide banking references.

G. Municipal Benefits/Impacts/Costs

The proposed development provides a fiscal benefit to the City. The proposed purchase price for the Parcel must be equal to or greater than the minimum value to be established by the Board of Aldermen. In addition, the proposed Project must yield net revenue to the City in excess of the cost of City services.

Include the following:

1. Provide calculations for all local taxes anticipated by the Project upon its completion;
2. Provide calculations of the cost of municipal services, and methodology for such calculations;
3. Identify the number and types of jobs expected to result from the Project, parking facility and ancillary uses and include the pay range of such positions.
4. Describe the anticipated neighborhood impacts, including traffic, noise, odor, lighting, and shadow effects, both during and post construction;
5. Describe other benefits, impacts, or costs including contribution to community improvement projects; and
6. Describe any proposed infrastructure improvements to be made by the Preferred Developer.

H. Exclusive Negotiating Agreement

Include the following:

1. A statement of the Preferred Developer's willingness to execute an ENA in substantially the form included herein as **Appendix F** (which expressly provides, among other things that the final LDA, a sample of which is attached as **Appendix G**, will be subject to the approval of the Board of Aldermen);
2. Identify modifications to the ENA and LDA as applicable.

L. Financial Deposit

All Applicants must make a \$10,000 deposit at the time of submission of their full application, which shall be retained by the City as a Good Faith Deposit without any obligation on the part of the City to pay interest thereon.

All deposits except for that of the Preferred Developer will be returned to Applicants within 30 days of the conclusion of the selection process. The Preferred Developer authorizes the City to use this initial deposit to fund the City's due diligence, including appraisal of the subject property. The remaining deposit will be credited toward the 10% deposit due at the time of signing the LDA.

The Preferred Developer will enter into an Exclusive Negotiating Agreement ("ENA") with the City and commence good faith negotiations for a Land Disposition Agreement ("LDA"). During the ENA period, the Preferred Developer will be required to undertake project design, environmental site investigation/testing, and a title search. In the event that an LDA is not signed, the deposit will not be refunded. If the project does not break ground within three years from the date of transfer, the City retains the right to take back title to the land at no cost. The deposit of the Preferred Developer will be held by the City during the ENA period and will be credited to the deposit due at the time of signing the

LDA. If the parties fail to agree upon the terms of an LDA during the ENA Period, the deposit will be forfeited.

An additional deposit for a total of 10% of the purchase price will be required at the time of execution of the LDA, and further, that the City will require a letter of credit, bond, or other security for performance of development obligations which survive the closing.

Include the following:

1. A statement that the applicant is willing and able to make a deposit of 10% of the purchase price if selected as the Preferred Developer upon signing the Land Disposition Agreement.
2. A statement that allows the City to use their financial deposit funds to conduct its due diligence as needed.

M. Certification of Good Faith

Include an executed Certification of Good Faith, pursuant to G.L. c. 30B, §10, a copy of which is included as **Appendix H**.

N. Disclosure Statement

Include an executed Disclosure Statement, as required by G.L. c. 7, s. 40J, a copy of which is included as **Appendix I**.

V. Selection Process

The Powder House Community School Technical Advisory Committee (“Committee”) shall include staff from the Mayor’s Office, the Purchasing Department, the OSPCD, and other representatives.

The Committee will make evaluations based on information provided in the submitted envelope entitled “Powder House Community School Proposal”. The Committee may request additional information of the applicants in writing and use that information in evaluating the responses. Proposers may be asked to present their proposals to the Committee, other City staff, neighborhood groups, the Board of Aldermen, and/or the Mayor as part of this review process.

Each member of the Committee will be required to fill out the Evaluation Criteria Form with a scoring system as identified in **Section VII**. Each committee member’s Evaluation Criteria forms will be individually tabulated and then aggregated for each Proposal.

The Committee shall provide the Mayor with a written report evaluating all proposals. Based on the report, the Mayor will select a Proposal and submit that Proposal to the Board of Aldermen for approval and selection of the Preferred Developer.

VI. Key Dates for RFP

RFP release	December 26
Pre-bidders Conference	January 16
Deadline for Submitting Questions on RFP	February 21
RFP due by	February 28 @11:00am*
Initial evaluation of RFPs	March 4
Proposers contacted for interviews	March 11-15
Mayor’s Recommendation to Aldermen	March 18
Aldermanic Review	March 21
ENA Signed	TBD
LDA Signed	TBD

*The deadline for the submission of RFP’s is intended to follow the issuance of a Board of Aldermen Order establishing the minimum price for the Parcel, and setting forth restrictions (if any) on future use.

VII. Evaluation Criteria

The Evaluation Criteria Form is based upon a **100 point** rating system. Points are allocated as follows:

Qualifications and References

1. Developer's prior urban infill project experience	15
2. Development team member's expertise with delivering the program	12
3. Design team's prior experience with community engagement in design	15
Sub-total	42

B. Project Narrative

1. Program of Uses	7
2. Timeline	3
3. Additional Amenities, including use of open space	5
4. Green Building Elements	2
5. Transportation, Parking and Circulation strategies	3
Sub-total	20

C. ENA / Purchase Price

1. Proposed purchase price for the Parcel exceeds minimum value	7
2. Limited Requests for modifications to the ENA or LDA	1
Sub-total	8

D. Financial Feasibility

1. Financial and management interests in the project	2
2. Banking references	2
3. Plan to secure financing	5
Sub-total	9

E. Municipal Benefits and Impacts

1. Net fiscal impacts	10
2. Number and quality of jobs.	5
3. Mitigation against neighborhood impacts including traffic, noise, odor lighting, and shadow effects, both during and after construction;	4
4. Other benefits, impacts, or costs including contribution to community improvement projects.	1
5. Infrastructure improvements to be made by the applicant.	1
Sub-total	21

TOTAL 100

VIII. DISCLAIMER/RESERVATION OF RIGHTS

The City of Somerville makes no representations or warranties, express or implied, as to the accuracy and/or completeness of the information provided in this RFP. The City of Somerville reserves the right to extend the deadline for submission of proposals, to request supplementary information, and waive minor informalities and to reject any or all proposals if in its sole judgment the best interests of the City of Somerville would be served in doing so.

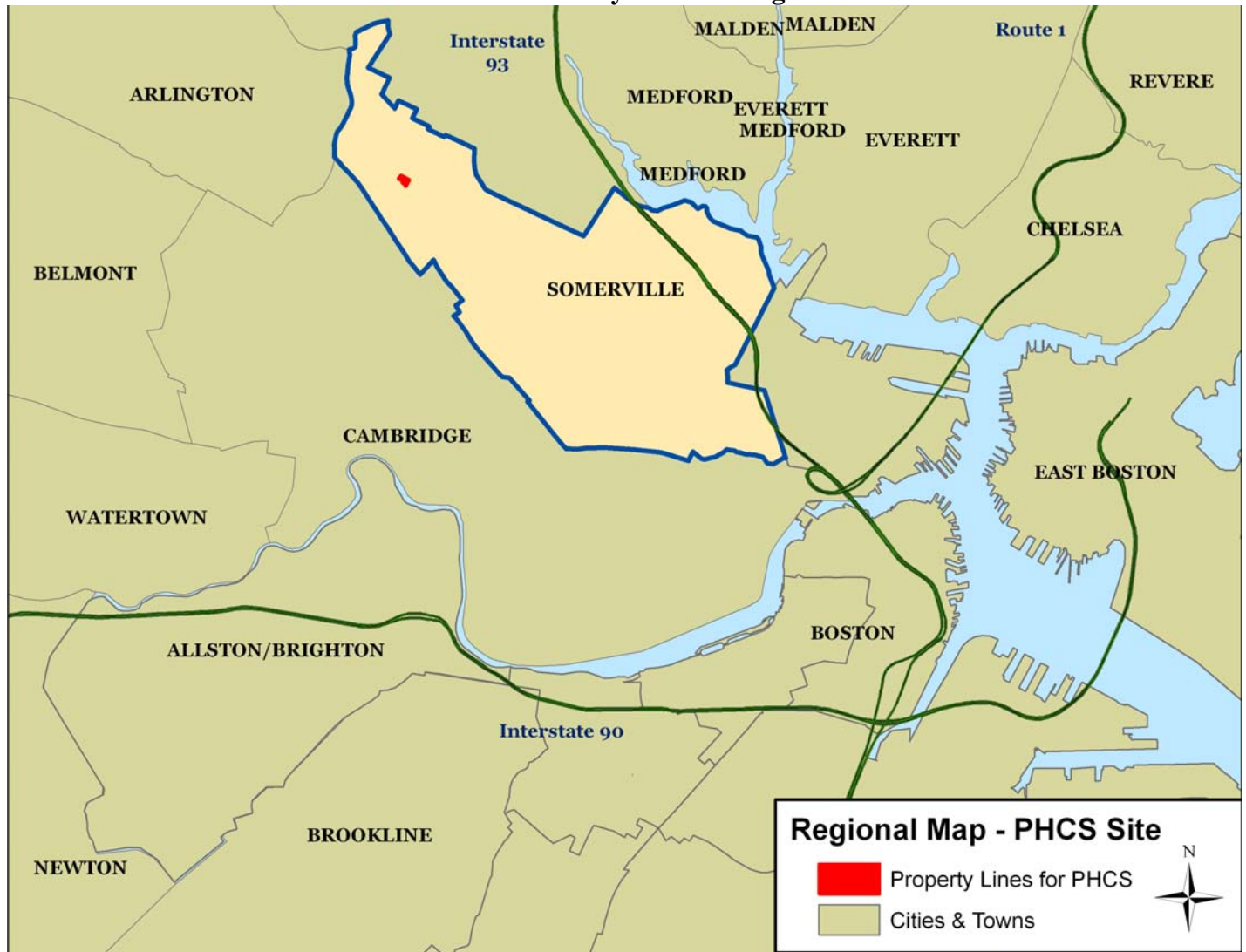
IX. ADDITIONAL INFORMATION

For additional information, please contact Angela Allen, Purchasing Director, at the above address or by telephone at (617) 625-6600, x. 3400, by fax at (617) 625-1344 or by e-mail at amallen@somervillema.gov.

The City will be providing updates, amendments and additional information regarding the RFP process to at the project's website: www.somervillema.gov/citybids

Disposition Property Maps

Powder House Community School – Regional Context



Powder House Community School – Neighborhood Map



Powder House Community School – Site Map



Disposition Parcel Description

MBLU : 12/ A/ 11/ / /
Location: 1060 BROADWAY
Owner Name: CITY OF SOMERVILLE
Account Number: 99738200

Parcel Value

Item	Appraised Value	Assessed Value
Buildings	5,201,100	5,201,100
Extra Building Features	113,900	113,900
Outbuildings	44,200	44,200
Land	1,879,100	1,879,100
Total:	7,238,300	7,238,300

Owner of Record

CITY OF SOMERVILLE
 POWDER HOUSE SCHOOL
 93 HIGHLAND AVE
 SOMERVILLE, MA 02144

Ownership History

Owner Name	Book/Page	Sale Date	Sale Price
CITY OF SOMERVILLE			0

Land Use

Land Use Code	Land Use Description
9340	MUNICIPAL EDUCATION

Land Line Valuation

Size	Zone	Appraised Value	Assessed Value
80857 SF	RA	1,879,100	1,879,100

Building Valuation

Item	Value
Living Area	79,094 square feet
Year Built	1973
Depreciation	18%
Replacement Cost Less Depreciation	17,444,600

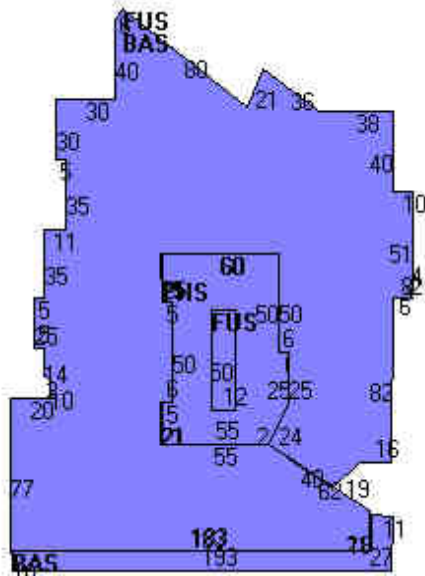
Outbuildings

Code	Description	Units	Appraised Value
PAV1	PAVING-ASPHALT	35000 S.F.	39400
	SHELTER	1	4800

Extra Features

Code	Description	Units	Appraised Value
SPR2	WET/CONCEALED	79094 S.F.	145900

Building Sketch



Subarea Summary

Code	Description	Gross Area	Living Area
BAS	First Floor	38889	38889
FHS	Half Story, Finished	5670	2835
FUS	Upper Story, Finished	37370	37370
PTO	Patio	5670	0
Total		87599	79094

APPENDIX C
Assessment Report



CITY OF SOMERVILLE, MASSACHUSETTS
BOARD OF ASSESSORS
JOSEPH A. CURTATONE
MAYOR

MARC A. LEVY, R.M.A., M.A.A.
CHIEF ASSESSOR
CHAIRMAN BOARD OF ASSESSORS
August 30, 2012

HUMPHREY MOYNIHAN, M.A.A.
MICHAEL FLYNN, M.A.A.
BOARD MEMBERS

To: Steven Azar, LEED AP
From: Lynda Swartz, M.A.A, Director of Commercial Assessments 

RE: 1060 Broadway, Powder House School Land & Building Value
Map 12 - Block A - Lot 11

The Powder House School, located at 1060 Broadway, Somerville, after up-to-date analysis of the property as is on this date, the land assessment is: \$1,879,100 and building: \$5,359,200.

Total Assessed Value: \$7,238,300



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 3100 • TTY: (866) 808-4851 • FAX: (617) 776-6042
EMAIL: assessing@somervillema.gov • www.somervillema.gov



APPENDIX D
Property Deed

to belonging to the said Town of Somerville, its successors and Assigns to its and their use and behoof forever. And I, the said Grantor for myself and my Heirs, Executors, and Administrators do covenant with the said Grantee and its successors and Assigns that I, lawfully seized in fee simple of the afore granted premises, that they are free from all incumbrances, that I have a good right to sell and convey the same to the said Grantee and its successors and Assigns forever, as aforesaid. And that I will and my Heirs, Executors, and Administrators shall Warrant and Defend the same to the said Grantee, its successors and Assigns forever against the lawful claims and demands of all persons. For Witness Whereof. We the said Mark Fiske and Sarah E. Fisk wife of said Mark, in token of her release of all right and title of or to both Dover and Homestead in the granted premises, have hereunto set our hands and seals this eighth day of October in the year of our Lord eighteen hundred and sixty seven. Mark Fisk (seal). Sarah E. Fisk (seal). Signed, sealed, and delivered in presence of us, a Commonwealth of Massachusetts, Suffolk ss. October, 1867. Then personally appeared the above named Mark Fisk and acknowledged the foregoing instrument to be his free act and deed. Before me, Tho^s Cunningham, Justice of the Peace.

Middlesex ss. Oct. 25. 1867. Recd & Recorded,
Attest: Chas^s Stevens Reg.

Davis
to
Town of
Somerville.

Know all Men by these Presents, That I, Person Davis, of Somerville, in the County of Middlesex, and Commonwealth of Massachusetts, Merchant, in consideration of Three thousand six hundred and nine dollars, paid by The Town of Somerville aforesaid, these receipt whereof is hereby acknowledged, do hereby, Give, Grant, Bargain, Sell, and Convey, unto the said Town of Somerville, its successors and assigns, a certain piece or parcel of Land being and situated in said Somerville, and bounded and described as follows: beginning at a point on Charlestown Street, so called, at the Easterly corner of the premises hereby conveyed and thence running Northwesterly by said Charlestown street three hundred and seventy one (371) feet six inches to a stone wall; thence turning and running Southwesterly by land this day conveyed by said grantor to Silas H. Holland, three hundred and eighty five (385) feet to a proposed new street; thence turning and running Southwesterly by said street one hundred and eighty one (181) feet more or less, thence turning and running Southeasterly continuing by said Street three hundred and forty six (346) feet to land now or late of Jesse Simpson, thence turning Northeasterly by said land of said Simpson up hundred and

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Rev. Stamps
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P. D.
Oct. 18. 1867

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seventy eight (678) feet more or less to the point of beginning on said Chasestown street; Said Premises containing five acres and twenty five rods and a portion of the same conveyed to said grantor, by Mary L. Hayes by her deed dated Nov. 22^d 1864, and recorded with Mead's Deeds, S. Dist. Lib. 950 fol. 58. To Have and to Hold, the above-granted Premises with all the privileges and appurtenances thereto belonging, to the said Town of Somerville, its Successors and Assigns, to its and their use and behoof forever. And I the said Grantor for myself and my Heirs, Executors and Administrators, do covenant with the said Grantee and its successors and Assigns, that I am lawfully seized in fee simple of the afore-granted premises; that they are free from all incumbrances, that I have a good right to sell and convey the same, to the said Grantee and its Successors and Assigns forever as aforesaid; And that I will and my Heirs, Executors, and Administrators shall Warrant and Defend the same to the said Grantee its successors and Assigns forever, against the lawful claims and demands of all persons,

In Witness Whereof I the said Person ^{Davis} and I Lydia H. Davis, wife of said Grantor, in token of my release of all right and title of or to both dower and homestead in the granted premises, have hereunto set our hands and seals this twentieth day of August in the year of our Lord eighteen hundred and sixty seven. Person Davis (seal). Lydia H. Davis. (seal). Signed, sealed and delivered in presence of us J. Albert Taylor, Fannie L. Davis, Commonwealth of Massachusetts, Suffolk ss. August 20th 1867. Then personally appeared the above named Person Davis, and acknowledged the foregoing instrument to be his free act and deed, Before me, J. Albert Taylor, Justice of the Peace.

Middlesex ss. Oct. 25. 1867. Recd & Recorded.

One word interlined.

Notus Chas. B. Jones Reg.

Whereas Richard Sullivan of Boston in the County of Gumerys
of Suffolk and Commonwealth of Massachusetts, did heretofore
convey by deed unto Margaret Smith wife of David H. Smith of
Somerville in the County of Middlesex and Commonwealth aforesaid
said a certain piece or parcel of land situate in said Somerville
bounded and described as follows, viz: North Easterly on Flint Street
fifty feet. South Easterly on lot numbered one hundred and seven-
ty eight, and one hundred and fifty two of A. Wadsworth's plan of the
premises and adjoining land dated Oct. 8th 1856 one hundred and fif-
teen feet. South Westerly on lot number one hundred and seventy
seven fifty feet North Westerly on lot number one hundred and
fifty four one hundred and fifteen feet being the lot number one hun-

NO. 2
Rev. Stamp
50 cts.
R. S.
Oct. 23, 1867

178246422

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DEED

The CITY OF SOMERVILLE, a Massachusetts municipal corporation situated in Middlesex County, for consideration paid and in full consideration of \$1,650,000 grants to TRUSTEES OF TUFTS COLLEGE, a Massachusetts corporation, having an usual place of business at Ballou Hall, Medford, Middlesex County, Massachusetts:

That certain parcel of land situated in Somerville, Middlesex County, Massachusetts, with the buildings and improvements thereon, shown as Lot B on a plan entitled "A Plan of Land in Somerville, Mass., Prepared For: Tufts University", dated July 24, 1986, by Schofield Brothers, Inc., Registered Professional Land Surveyors and Engineers, to be recorded herewith, and bounded and described as follows:

- SOUTHWESTERLY by Holland Street, by four lines together measuring 529.04 feet;
- NORTHWESTERLY by lands shown on said plan as now or formerly of Glendinning, Higgins and Gibson, by three lines measuring, respectively, 108.90 feet, 91.77 feet and 13.09 feet;
- NORTHEASTERLY by remaining adjoining land of the City of Somerville, shown as Lot A on said plan, 184.81 feet;
- SOUTHEASTERLY by said Lot A, 12.38 feet;
- NORTHEASTERLY again by said Lot A, 10.03 feet;
- SOUTHEASTERLY again by said Lot A, 39.96 feet;
- NORTHEASTERLY again by said Lot A, 47.79 feet;
- SOUTHEASTERLY again by said Lot A, 7.86 feet;
- NORTHEASTERLY again by said Lot A, 36.50 feet;
- NORTHWESTERLY by said Lot A, 19.28 feet;
- NORTHEASTERLY again by said Lot A, 76.28 feet;
- SOUTHEASTERLY again by said Lot A, 3.96 feet;
- NORTHEASTERLY again by said Lot A, 53.12 feet; and

Address: Canton St High School, Holland St, Somerville

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SEE PLAN IN RECORDS BOOK 17824 PAGE 422

17824 PC 423

SOUTHEASTERLY

by lands shown on said plan as now or formerly of Magee, Anderson, O'Hearn, Reynolds, Harkins, Edson and Sterne, Petras and Zwanziger, Anderson and the City of Somerville, by two lines together measuring 382.16 feet;

Containing 137,227 square feet of land, more or less, according to said plan.

Being a portion of the premises conveyed to the Grantor by Person Davis by deed dated August 20, 1867, recorded with Middlesex South District Registry of Deeds, Book 1022, Page 436.

This deed is delivered and accepted upon the following terms and conditions:

A. Said premises are hereby conveyed together with rights and easements appurtenant thereto, as follows:

1. Temporarily and only for purposes of construction and development of the parking roof structure in the Playing Court Easement area on said Lot B as shown on the above-mentioned plan, pursuant to and in accordance with the Land Disposition Purchase and Sale Agreement by and between the Grantor and the Grantee dated July 30, 1986, to enter upon and to occupy the portion of said Lot A shown as "Temporary Use Area" on said plan, provided that (a) such temporary construction rights and easements shall be exercised with due care and with due regard to avoidance of disturbance of the use and operation of the adjoining Powder House Community School; (b) prior to conducting such activities thereon, the Grantee shall give notice to the School Department's Building and Grounds Director, and shall schedule such activities in accordance with his reasonable recommendations; (c) said area shall be suitably enclosed and shall not be used for storage of vehicles, equipment or materials for construction on the lot other than as described above, or as a construction office site; (d) said area shall be vacated by the Grantee as promptly as reasonably practicable upon completion of construction of the adjacent parking roof structure and playing courts thereon; and (e) notwithstanding the preceding clause (d) the Grantee shall continue to have a right of access to said Temporary Use Area, subject to the prior written approval of the School Department's Building and Grounds Director, at such times and to such extent as are reasonably necessary in order for

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the Grantee to fulfill its obligations with respect to maintenance and repair of the parking roof structure as referred to in paragraph B.2. hereof.

2. To use for pedestrian passage (but not with any motor vehicles) a passageway on said Lot A, lying northwesterly of the Powder House Community School and extending from Broadway to said Lot B, being part of the "Pedestrian Way", seven (7) feet wide, shown on said plan, provided that (a) such rights and easements shall be exercised with due care and with due regard to avoidance of disturbance of the use and operation of said Powder House Community School, (b) the Grantor may from time to time temporarily close off said Lot A, including said Pedestrian Way, from public access, because of construction, maintenance and repair, but only for the minimum amount of time necessary to complete such construction, maintenance and repair, and (c) the location of said Pedestrian Way on Lot A may be modified by the Grantor, with the consent of the Grantee, which shall not be unreasonably withheld, provided that reasonably convenient pedestrian passage between Broadway and Holland Street over said Lots A and B shall be preserved.

3. To use for purposes of emergency egress only, the exit doorway from the building on said Lot B into the Powder House Community School on said Lot A and, within the portion thereof shown as "Common Area" on said plan, the corridors and stairs leading therefrom to and through the exit doorways of the Powder House Community School, and thence to said Pedestrian Way.

4. To use, maintain, repair and replace as necessary, all utility facilities, and all drainage facilities which serve said Lot B, in common with said Lot A insofar as any of the same serve said Lot A; and also to install, use, maintain, repair and replace as necessary, underground utilities and communication lines in such location under said Lot A as shall be reasonably convenient to afford connection to utility and communication facilities now or hereafter existing in said Broadway; provided, always, that any party exercising such rights and easements shall do so at such party's own sole expense and risk, and shall promptly complete any work done, and restore the surface of the ground as nearly as practicable to its former condition.

B. Said premises are hereby conveyed subject to rights and easements, hereby reserved by the Grantor as appurtenant to said Lot A, as follows:

1. To use for pedestrian passage (but not with any motor vehicles) a passageway on the surface of said Lot B, open to light and air, extending from Holland Street to said Lot A, being part of said Pedestrian Way seven (7) feet wide shown on said plan; provided that (a) such rights and easements shall be exercised with due care and with due regard to avoidance of disturbance of the use and operation of the building and facilities on said Lot B, (b) the Grantee may from time to time temporarily close off said Lot B, including said Pedestrian Way, from public access, because of construction, maintenance and repair, but only for the minimum amount of time necessary to complete such construction, maintenance and repair, and (c) the location of said Pedestrian Way on Lot B may be modified by the Grantee, with the consent of the Grantor, which shall not be unreasonably withheld, provided that reasonably convenient pedestrian passage between Broadway and Holland Street over said Lots A and B shall be preserved.

2. To use and to have exclusive possession of, and to permit the public to use, playing courts to be constructed on top of the roof over parking space on said Lot B, shown as "Playing Court Easement" on said plan, and fences and safety barriers enclosing the same; provided that (a) the rights and easements under this paragraph shall not be exercisable by the Grantor until the Grantee shall have certified in writing to the Grantor that the construction of said parking roof structure has been duly completed, which shall be accomplished on or before the Initial Occupancy Date set forth and defined in Section I, paragraph 16, of said Land Disposition Purchase and Sale Agreement; (b) any and all exercise of said rights and easements by the Grantor shall be at the Grantor's own sole risk, and the Grantor shall indemnify, exonerate and save harmless the Grantee against and from any and all loss, cost, claim or liability arising out of or in relation to the exercise of such rights and easements by the Grantor, its employees, agents, contractors and invitees, except to the extent that such loss, cost, claim or liability arises out of or in relation to acts or defaults of the Grantee, its employees, agents, contractors and invitees, or defects in the structure; (c) the Grantor shall be responsible for the ordinary care, cleaning and maintenance of the finished surface and the equipment of said playing courts, and fences and safety barriers enclosing the same, and shall not permit the same to be used in a

manner which impairs or jeopardizes the structural integrity or condition of said parking roof structure; (d) the Grantee shall be responsible for the structural integrity and maintenance and repair, of said parking roof structure, and shall have the right, but not the obligation, to cure any failure or neglect of the Grantor to perform the requirements of the preceding clause (c); and (e) said rights and easements shall be exercisable only for so long as any portion of said Powder House Community School is maintained and used as a public school of the City of Somerville.

3. To use, maintain, repair and replace as necessary, all utility facilities, and all drainage facilities which serve said Lot A, in common with said Lot B insofar as any of the same serve said Lot B; and also to install, use, maintain, repair and replace as necessary, underground utilities and communication lines in such location under said Lot B as shall be reasonably convenient to afford connection to utility and communication facilities now or hereafter existing in said Holland Street; or on land of the City adjacent to Lot B; provided, always, that any party exercising such rights and easements shall do so at such party's own sole expense and risk, and shall promptly complete any work done, and restore the surface of the ground as nearly as practicable to its former condition.

C. The walls of the Powder House Community School building on said Lot A and of the former Western Junior High School building on said Lot B which adjoin and abut each other (herein called the "Common Walls") shall be maintained as party walls to the extent and in such manner as each is necessary to the integrity and support of the other or the enclosure or roof support of the adjoining building. To that end, the Grantor hereby covenants and agrees with the Grantee, and by acceptance hereof the Grantee hereby covenants and agrees with the Grantor, as follows:

1. The Grantee and the Grantor, and their respective successors and assigns, shall have the right and easement to use, maintain and repair, the Common Walls and any foundations, footings or portions thereof and any encroachments thereof now existing; provided that either party undertaking any work pursuant hereto shall conduct and complete the same in a manner which does not impair the enclosure, structural integrity or support of the Common Walls;

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2. The Grantor and the Grantee, and their respective successors and assigns, shall afford to each other such reasonable right of access to the land of the other in the immediate vicinity of the Common Walls as may be necessary or appropriate in relation to the provisions of the preceding paragraph 1. Either party who exercises any rights pursuant hereto shall indemnify, exonerate and save harmless the other party against and from any and all loss, cost, damage or liability arising out of or in connection with such action or the entry upon the land of the other party; and

3. Nothing herein shall be deemed to abrogate or limit the right of either party to erect, maintain, repair, replace and use buildings, structures, walls and other improvements on such party's own land, provided that either party undertaking such work shall conduct and complete the same in a manner which does not impair the structural integrity or support of the Common Walls.

D. Said premises are hereby conveyed subject further to the Right of First Refusal, as herein set forth, hereby reserved to the Grantor, herein called the "City", and to which the Grantee by its acceptance hereof agrees, as follows: If and whenever the Grantee shall determine, in its own judgment and discretion, that the premises hereby conveyed, or any portion thereof (herein called a "Disposition Parcel") are no longer needed for the purposes of the Grantee, then the Grantee shall have the right to sell such Disposition Parcel, but shall not do so unless and until:

1. The Grantee has received a bona fide offer (the "Offer") from a third party (the "Offerer") to purchase the same; and

2. The Grantee has given written notice (the "Notice") to the City stating the name and address of the Offeror and the terms and conditions of the Offer, and the encumbrances subject to which the Disposition Parcel is to be conveyed; and

3. The Grantee has in and by the Notice offered to sell the Disposition Parcel to the City on the same terms and conditions as the Offer and subject to the same encumbrances; and

4. The City has not, within sixty (60) days after the giving of the Notice, given to the Grantee a

written notice (the "Reply Notice") that the City elects to purchase the Disposition Parcel in accordance with the Offer.

In the event that the City shall so elect to purchase, the deed of the Disposition Parcel from the Grantee to the City shall be delivered, and the purchase price paid and other terms and conditions of the Offer performed, at Middlesex South District Registry of Deeds at 11:00 a.m. on the ninetieth (90th) day (or first business day thereafter) following the giving of the Reply Notice, time being of the essence.

In the event that the City does not elect to purchase, or does not in fact purchase, the Disposition Parcel, pursuant to the foregoing provisions hereof, then the Grantee shall be free thereafter to sell and convey the Disposition parcel to the Offeror in accordance with the Offer (or for a greater consideration), but the Grantee shall not sell or convey the Disposition Parcel to any other person or party, or at any lesser consideration, without again offering the same to the City in the manner aforesaid.

The aforesaid Right of First Refusal shall not be construed to apply to either (a) a bona fide mortgage by the Grantee to an institutional lender of the premises hereby conveyed or any such Disposition Parcel, or to proceedings for the foreclosure thereof by entry, sale or otherwise, or (b) a conveyance or transfer of the premises hereby conveyed or any such Disposition Parcel by the Grantee to a corporation or other entity owned or controlled by the Grantee and affiliated with the Grantee for purposes of assisting, contributing to or participating with the grantee in the performance and fulfillment of the Grantee's general corporate purposes (herein called an "Affiliate"); provided, however, that in the event of such conveyance or transfer to an Affiliate, said Right of First Refusal shall continue in full force and effect for so long as such Affiliate owns the premises or such Disposition Parcel, and such Affiliate shall be deemed to be the "Grantee" for purposes hereof.

E. Said Lot B is hereby conveyed subject to the restrictions, for the benefit of said Lot A and enforceable by the Grantor for the period of thirty (30) years from the date hereof, that the Grantee shall not use any portion of the premises hereby conveyed for either (a) dormitories or student housing, or (b) chemical, physical or biological laboratories.

This deed is executed and delivered by the City of Somerville pursuant to law and the authority of the following:

EX 17824 RE 429

Vote of the School Committee of the City of Somerville dated May 16, 1983, and votes of the Board of Aldermen of the City of Somerville dated October 24, 1985, November 14, 1985, February 18, 1986, ~~and~~ May 22, 1986A and the City Charter, being Section 26 of Chapter 240 of the Acts of 1899, as amended by Chapter 308 of the Acts of 1932; and Chapter 769 of the Acts of 1985, and Chapter 291 of the Acts of 1986. ^{and September 25, 1986;}

The applicable provisions of Massachusetts General Laws, Chapter 7, Section 40J, and Chapter 44, Section 63A, have been complied with.

Witness the execution hereof under seal by the City of Somerville, the Grantor, and in token of its acceptance hereof, by Trustees of Tufts College, the Grantee, this 29th day of January, 1987.

Approved as to legal form:

CITY OF SOMERVILLE

Anthony P. Sullivan
Anthony P. Sullivan,
City Solicitor

By Eugene C. Brune
Eugene C. Brune,
Mayor

TRUSTEES OF TUFTS COLLEGE

By Steven S. Manos
Steven S. Manos,
Executive Vice President

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

January 29, 1987

Then personally appeared the above named Eugene C. Brune, Mayor, and acknowledged the foregoing instrument to be the free act and deed of the City of Somerville, before me,

Edward C. Mendler, Jr.
Notary Public
My Commission expires: Edward C. Mendler, Jr.
NOTARY PUBLIC
My Commission
Expires Oct. 29, 1987

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COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

January 29, 1987

Then personally appeared the above-named Steven S. Manos, Executive Vice President, and acknowledged the foregoing instrument to be the free act and deed of Trustees of Tufts College, before me,

Edward C. Mendler, Jr.

Notary Public
My Commission expires:

Edward C. Mendler, Jr.
NOTARY PUBLIC
My Commission
Expires Oct. 29, 1987



APPENDIX E
Proposed Zoning

**Powder House School Site
Design Standards & Guidelines**
Version 2

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I. Purpose

To establish guidelines for the reuse or redevelopment of the Powder House Community School (PHCS) site that ensures an appropriately-scaled development that physically integrates into the existing neighborhood with adequate open space that creates recreational and environmental value to the City. These guidelines are intended to supplement the Planned Unit Development (PUD) Design Guidelines in Section 16.7 and Special Permit with Site Plan Review (SPSR) Design Guidelines found in Section 5.2 of the Somerville Zoning Ordinance.

II. Use and Dimensional Standards

Development must meet the following use and dimensional standards:

1. **Uses:** The following uses shall be allowed:
 - A. Office/R&D
 - B. Small Retail and Service
 - C. Medium Retail and Service
 - D. Eating and Drinking
 - E. Residential
 - F. Accommodations (ie hotel)
 - G. Educational/Recreational/Institutional
 - H. Public park/Recreational facility
 - I. Parking (along with other uses)
 - J. Protected Uses

Retail uses shall be limited to a total of no greater than 18,000 square feet.

These uses are based upon Clusters A, B, C, D, E, F, G, I, J in Table 7.13. Retail uses that would be limited in size are in clusters B, C and D.

2. **Building Height & Mechanical Equipment.** New buildings should not exceed 45 feet in height, except that all elevator and stairwell penthouses, roof mounted mechanical equipment (including enclosure, if any) and other similar rooftop installations shall be set back behind a plane inclined at 45 degrees from the vertical, beginning at the maximum height of the building, along all street lines and rear lot line and shall be screened

Screening shall be pursuant to Section 10.5.2 of the Zoning Ordinance.

3. **Minimum Lot Size:** The minimum lot size shall be set to include the entire 80,800 square foot site, but with the understanding that a user shall be allowed to dedicate portions of the site back to the City of Somerville for a dedicated city park.
4. **Setbacks:** As a transition to abutting residential structures, a minimum of 15 feet of side yard setback is required. Within 25 feet of a side yard, no structure may be greater than 30 feet in height, except that residential townhouses, two-family homes or single-family homes may be 35 feet in height. The side

yard setback and height requirements shall not apply to any application reusing the square footage of the existing PHCS in the setback provided that at least 50% of the total square footage of the building will be retained. Also, the structure shall not further encroach within setback areas.

5. **Development Intensity:** A development shall not exceed a FAR of 1.0 and a maximum of 35 residential units. A development that reuses the net square footage within the existing school building may exceed the FAR and residential unit requirement, providing up to 40 units and add up to 10% of additional space to the existing structure.
6. **Dedicated Parkland.** A continuous portion of the parcel's total square footage, with a minimum of 0.75 acres, shall be improved for public open space (including on-site sidewalks, public paths, park and/or playground use). Dedicated parkland may be placed above underground parking areas, but shall not be elevated at a grade more than three feet above street level. The public open space shall be dedicated to the City of Somerville unless there is a determination that the long-term user of the site is better capable of maintaining the open space.
7. **Parking Requirements:** Parking requirements shall be:
 - A. 1 space per 800 sf office
 - B. 1 space per 1500 sf small retail
 - C. 1 space per 800 sf medium retail
 - D. 1 space per residential unit
 - E. 1 space per 400 sf educational / institutional

Applicants will be required to meet the parking and loading requirements in Section 9.17 of the Somerville Zoning Ordinance (following the parking requirements for the CCD districts developed)

III. Development Standards

1. **Lighting.** Lighting shall be appropriate to the surrounding historic and pedestrian-oriented neighborhood character. The light levels of the development and open space should be designed for safety while minimizing glare and light trespass. Applicants will be required to prove that light trespass onto adjacent residential properties is minimized or eliminated.
2. **Parking Optimization Plan.** Applicants shall include a Parking Optimization Plan illustrating how management and possible pricing strategies will encourage shared use and reasonable turnover of parking spaces.
3. **Pedestrian Connections.** Continuous pedestrian connections shall be retained between major points of pedestrian activity on the site, including, but not limited to, the connection through the site connecting Packard Avenue at Broadway to Holland along the side of the existing Tufts Administration Building (TAB). Adequate lighting along the path shall be maintained and the path shall be accessible 24 hours a day, 7 days a week, 365 days per year.
4. **Pedestrian Oriented Requirements.** To promote pedestrian activity, new or renovated buildings shall be designed with windows and separate front entrance doors to lobbies, retail and business, and other sources of pedestrian activity. These entrances shall be oriented to existing or proposed public sidewalks, paths, and/or open space.

5. **Service Areas and Loading Spaces.** Ground level mechanical equipment, utility and trash enclosures, loading docks and other utilitarian and service elements shall not abut the street edge(s) of the parcel and shall be visually screened.
6. **Shadow Effects.** Buildings shall be designed to minimize shadow and wind to open space and residential areas especially between 10 am and 2 pm in the winter. Shadow effects shall be demonstrated in technical studies.
7. **Transportation Analysis.** The applicant shall provide a Transportation Study and a Transportation Demand Management (TDM) Plan tailored to the proposed site and mix of use on the site. The scope of the document should be prepared in consultation with the City of Somerville's Director of Traffic & Parking and may include a project description and a description of the existing conditions of the transportation network in the vicinity of the site. The following items may be required as part of a Transportation Study:
 - a. Counts of existing traffic volumes.
 - b. Projected traffic volumes for the proposed development based on accepted engineering standards and adapted to local conditions.
 - c. Projected size of delivery vehicles, and frequency and days/hours of delivery.
 - d. Reviews of accident history trends in the vicinity of the site.
 - e. Analyses of the Development impacts on the transportation network in the vicinity of the site.
 - f. Examination of transportation by all feasible modes, including automobile, transit, bicycle and pedestrian.
 - g. Explanation of consistency with City transportation plans.

If the impact analyses indicate that safety or capacity will be adversely affected by the proposed development, the Applicant will indicate appropriate mitigation measures, subject to the approval of the Director of Traffic and Parking, prior to the granting of a special permit.

8. **Utilities.** Utilities and wiring shall be placed below ground.
9. **Research and Development Uses.** Research and development uses limited to a laboratory engaged in research, experimental and testing activities which may include the development of mockups and prototypes but not the manufacture of finished products. Any use that creates any noise, glare, dust, vibration, fumes, odors, gases, smoke, vapors, emissions of noxious or hazardous materials or substances outside of the structure, or creates any pollution of water ways or ground water, or transmission of signals that interfere with radio or television reception, or creates hazards to safety or health are not permitted.
10. **Parking Facilities.** *Where structured parking spaces are not accessory to a principal use on the same lot, the total square footage of such parking spaces shall be limited to occupy no more 40% of the total square footage of the net square feet developed on the site.*

IV. Design Guidelines

These guidelines are intended to provide general standards for building massing, siting and articulation.

1. **Street/Usable Open Space Facing Facades:** Structures should front the sidewalk and the publicly accessible usable open space. Varied architecture should be created by using recessed or projected entryways, bays, canopies, awnings, residential balconies on second floor or above, and other architectural elements.

Where there are ground-floor residential uses, front porches are encouraged.

Where there are ground-floor commercial uses, they should include thirty-foot-wide commercial bays with independent entrances onto the street to create visual and pedestrian interest.

Non-residential ground floor façades should have a minimum 75% transparent material, and non-residential second floor facades should have a minimum of 40% transparent material. These openings should provide views into the building and should not be blocked by interior storage, non-artistic displays, or greater than 30% internally mounted signage.

2. **Buildings in Context.** The new or renovated design should interface with the adjacent Tufts Administration Building through appropriately applied features that frame outdoor open spaces and/or screen other utilitarian and service elements. Visible rear and side façades should maintain a similar character to the front façade of the building and the intended character of the surrounding district.
3. **Exterior Building Materials.** All visible portions of new buildings should use high quality, durable, and aesthetically appropriate exterior building materials. Particular attention should be paid where properties abut residential property. Predominant exterior building materials should include an appropriate combination of brick, glass, wood, artistically used metal, stone, or stucco.
4. **Height Transitions.** A transition in height should be established where new development adjoins low-rise residential properties.
5. **Mechanicals.** All rooftop-building systems, including wireless communications facilities, should be incorporated into the building form in a manner integral to the building architecture, including screening with materials that harmonize with buildings' exterior finishes.
6. **Neighborhood-serving Uses.** It is strongly encouraged that, should any non-residential use be included in a development, the mix of uses proposed for the site have an emphasis on neighborhood-serving retail uses and community enriching services.
7. **New Buildings.** Massing and height of new buildings should be articulated in a manner compatible with the physical character of the surrounding districts, particularly where a building abuts a residential property. Whenever possible, historical variety in the scale, rhythm, and relationship of buildings should be preserved.
8. **Parking Entrances:** Entrances to on-site, off-street parking should be designed to minimize conflict with pedestrians.
9. **Public Art.** Installation of public art is encouraged to add visual interest and distinguishing features to landscaped or other public areas.
10. **Signage.** All signs should respect buildings' context and be oriented to pedestrians.
11. **Park:** The dedicated parkland/open space should a simple but elegant design, should be located to support public gathering (i.e. not hidden behind the development site), and be interconnected to the connection between Broadway and the TAB site. The parkland should include elements that meet the needs of the neighborhood and the community as well as the new development. The park shall be shaped to maximize its usefulness.

12. **Parking:** The project should investigate the opportunity to share parking between uses to minimize the amount of paved parking areas and/or garages. Also, car-share or flex-car spaces should be incorporated into parking area where possible. Parking should be located underground, if possible. Parking may be located at-grade, underground or in parking decks that are shielded from adjacent residential property and the street by portions of the structure not being used for parking. Parking in decks or at grade should be designed so as to reduce their visibility from Broadway and from adjacent residential structures.
 13. **Connections:** Any proposed development shall support improved access to surrounding neighborhoods by means of sidewalk connections, crosswalks, landscaping, traffic signalization and traffic calming methods.
 14. **Green Elements:** Applicants shall demonstrate the project is capable of meeting LEED for buildings, LEED-ND, or a viable alternative standard for green building and neighborhood design. Whenever possible, green roofs should be incorporated into the project and should include gardens or usable features.
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CITY OF SOMERVILLE
ORDINANCE NO. _____
IN THE BOARD OF ALDERMEN: _____

AN ORDINANCE AMENDING THE SOMERVILLE ZONING ORDINANCE TO INCLUDE PLANNED UNIT DEVELOPMENT-C OVERLAY DISTRICT IN ARTICLE 6 “ESTABLISHMENT OF ZONING DISTRICTS”, AND ARTICLE 16 “PLANNED UNIT DEVELOPMENT (PUD)”, AND MAPPING THE DISTRICT AT THE POWDER HOUSE SCHOOL SITE NEAR TEELE SQUARE.

WHEREAS...

NOW THEREFORE, be it adopted by the Board of Aldermen, in session assembled, that the below listed sections of the Somerville Zoning Ordinance are hereby amended as identified.

1. Article 6: Establishment of Zoning Districts, Section 6.1.21 Planned Unit Development Overlay District C is hereby added as follows (additions are underlined):

6.1.21 Planned Unit Development Overlay District C

A. Purpose. See Section 16.1

B. Standards and Guidelines. A Planned Unit Development shall be allowed by Special Permit with Site Plan Review in PUD-C Overlay Districts and shall be regulated by the requirements of Section 16. PUD-C Districts shall be overlay districts on the zoning map. For any land within a PUD-C overlay district, a developer may choose to conform either to all the controls which govern the base district(s) or to all the PUD development controls and processes.

The Planning Board shall serve as the Special Permit Granting Authority in the PUD-C Overlay District.

2. Article 16: Planned Unit Development (PUD), Section 16.2 Applicability is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

Section 16.2. - Applicability.

A PUD shall be permitted only in a Planned Unit Development B, C or Overlay District or in the ASMD. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. Except as modified by Section 6.4 of this Ordinance, PUD-A requirements apply in the ASMD. Refer to Section 6.4 for more information on the ASMD and PUD-A.

3. Article 16: Planned Unit Development (PUD), Section 16.5 PUD Conformance with Standards is hereby amended as follows (additions are underlined and deletions are ~~crossed-out~~):

Section 16.5. - PUD Conformance with Standards.

16.5.1. Dimensional Requirements: Within a PUD-A, refer to the dimensional requirements of Section 6.4.6.

Within a PUD-B, PUD-B1 and PUD-C, the following dimensional requirements shall apply in place of those found in Section 8.5:

		PUD-B and	<u>PUD-C</u>
		PUD-B1	
	a minimum lot size (s.f.) (1)	75,000	<u>80,800</u>
<i>Request for Proposals</i>	Page 38 of 62	<i>Powder House Community School Project</i>	

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b	minimum lot area/dwelling unit (2)		
.			
	1-9 units (s.f.)	875	<u>2,300 (9)</u>
	10 or more units (s.f.)	1000	<u>2,300 (9)</u>
c	maximum ground coverage (%) (2)	65	<u>60</u>
.			
d	landscaped area, minimum percent of lot (2)	20	<u>NA (10)</u>
.			
e	floor area ratio (FAR) (2)	3.00	<u>1.00 (9)</u>
.			
f	maximum height, stories/feet (3), <u>(7)</u>	7 stories/100 feet <u>(4)</u>	<u>45 feet (8)</u> <u>(9)</u>
.			
g	setbacks (front, side, and rear perimeter) (5)	15 <u>(6)</u>	<u>15(9)</u>
.			

16.5.2. Footnotes to Section 16.5.1.

1. Lot Size: there shall be no required minimum lot size for any development within the PUD-B, and PUD-B1 excepting for the lot size requirement for the PUD itself.
2. Site Intensity: the overall site intensity of a PUD-B and PUD-B1, on average, shall comply with the requirements of Section 16.5.1.b, c, d, and e; however, a section or phase of the PUD-B and PUD-B1 may have concentration of land intensity greater than the site-specific intensity allowed, provided that any greater concentration shall be offset by a smaller concentration in another section or phase of the PUD-B and PUD-B1 or by an appropriate reservation of usable open space elsewhere in the PUD-B and PUD-B1 (see Section 16.6.2).
3. Height: See Section 8.6.3.
4. Height Limit for Structures Abutting Residential Lots: where a PUD-B and PUD-B1 abuts a lot or lots within an RA, RB, or RC zoning district, any structure (or portion of a structure) within thirty (30) feet of said lot shall be limited to three (3) stories and forty (40) feet in height.
5. Setbacks: setback requirements within a PUD-B and PUD-B1 shall apply only to the perimeter of the PUD-B and PUD-B1. No minimum yards or setbacks are required for development tracts contained internally within the PUD-B and PUD-B1.
6. Setbacks for Sites Abutting Residential Lots: where a PUD-B and PUD-B1 abuts a lot or lots within an RA, RB, or RC zoning district, no building (or portion of a building) shall be erected closer to said lot line than one-third (1/3) the height of the said building, but not less than fifteen (15) feet.
7. All elevator and stairwell penthouses, roof mounted mechanical equipment (including enclosure, if any) and other similar rooftop installations shall be set back behind a plane inclined at 45 degrees from the vertical, beginning at the maximum height of the building, along all street lines and rear lot line and shall be screened.
8. Height Limit for Structures Abutting Residential Lots: where a PUD-C abuts a lot or lots within an RA, RB, or RC zoning district, any structure (or portion of a structure) within twenty-five (25) feet of said lot shall be limited to thirty (30) feet in height, except that residential townhouses, two-family homes or single-family homes may be 35 feet in height.
9. Reuse of building: where at least 50% of the existing floor area of the Powder House Community School will be retained for use, the side yard setback and height requirements shall not apply; however, the structure shall not encroach farther into the setback area. If all of the existing floor area of the school is retained for use, the lot area per dwelling unit may decrease to 2,020 sf (40 units would be allowed on site) and the square footage of the structure may increase by 10%.

10. Dedicated parkland: a minimum of 0.75 acres of the site shall be improved for public open space as detailed in Section 16.6.3.

16.5.3. Mixed Uses. The uses allowed in PUD-B and PUD-B1 are listed in Table 7.11. The uses allowed in PUD-C are the following use clusters in Table 7.13.

Use Cluster:

F. Office/R&D (see Section 16.6.1.9)

G. Small Retail and Service -

H. Medium Retail and Service- Use Clusters B, C and D will be limited to total of no
greater

I. Eating and Drinking- than 18,000 square feet

J. Residential

K. Other Accommodations

L. Educational/Recreational/Institutional

Within Cluster I. Other Uses:

Public park/Recreational facility,

Parking spaces for car-share or flex-car spaces,

Structured motor vehicle parking where the parking spaces are not accessory to a principal use on the same lot and where no sales and service takes place (see Section 16.6.1.9)

J. Protected Uses

In reference to the provisions of Article 7 of this Ordinance, when a specific use is permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

- 1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;
- 2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question.

In the PUD-B1 district, a PUD with a residential component that exceeds these stipulations is permitted without requiring a waiver under Section 16.5.4.

4. Article 16: Planned Unit Development (PUD), Section 16.6 PUD Usable Open Space is hereby amended as follows (additions are underlined and deletions are ~~crossed out~~):

16.6.3 Dedicated Parkland Requirement in the PUD-C. A continuous portion of the parcel's total square footage, with a minimum of 0.75 acres, shall be improved for public open space (including on-site sidewalks, public paths, park and/or playground use). Dedicated parkland may be placed above underground parking areas, but shall not be elevated at the grade more than three feet above street level. The public open space shall be dedicated to the City of Somerville unless there is a determination that the long-term user of the site is better capable of maintaining the open space.

Section 16.6.1. – Development Standards for PUD-C.

11. Lighting. Lighting shall be appropriate to the surrounding historic and pedestrian-oriented neighborhood character. The light levels of the development and open space should be designed for safety while minimizing glare and light trespass. Applicants will be required to prove that light trespass onto adjacent residential properties is minimized or eliminated.
12. Parking Optimization Plan. Applicants shall include a Parking Optimization Plan illustrating how management and possible pricing strategies will encourage shared use and reasonable turnover of parking spaces.

13. Pedestrian Connections. Continuous pedestrian connections shall be retained between major points of pedestrian activity on the site, including, but not limited to, the connection through the site connecting Packard Avenue at Broadway to Holland along the side of the existing Tufts Administration Building (TAB). Adequate lighting along the path shall be maintained and the path shall be accessible 24 hours a day, 7 days a week, 365 days per year.
14. Pedestrian Oriented Requirements. To promote pedestrian activity, new or renovated buildings shall be designed with windows and separate front entrance doors to lobbies, retail and business, and other sources of pedestrian activity. These entrances shall be oriented to existing or proposed public sidewalks, paths, and/or open space.
15. Service Areas and Loading Spaces. Ground level mechanical equipment, utility and trash enclosures, loading docks and other utilitarian and service elements shall not abut the street edge(s) of the parcel and shall be visually screened.
16. Shadow Effects. Buildings shall be designed to minimize shadow and wind to open space and residential areas especially between 10 am and 2 pm in the winter. Shadow effects shall be demonstrated in technical studies.
17. Transportation Analysis. The applicant shall provide a Transportation Study and a Transportation Demand Management (TDM) Plan tailored to the proposed site and mix of use on the site. The scope of the document should be prepared in consultation with the City of Somerville's Director of Traffic & Parking and may include a project description and a description of the existing conditions of the transportation network in the vicinity of the site. The following items may be required as part of a Transportation Study:
 - a. Counts of existing traffic volumes.
 - b. Projected traffic volumes for the proposed development based on accepted engineering standards and adapted to local conditions.
 - c. Projected size of delivery vehicles, and frequency and days/hours of delivery.
 - d. Reviews of accident history trends in the vicinity of the site.
 - e. Analyses of the Development impacts on the transportation network in the vicinity of the site.
 - f. Examination of transportation by all feasible modes, including automobile, transit, bicycle and pedestrian.
 - g. Explanation of consistency with City transportation plans.

If the impact analyses indicate that safety or capacity will be adversely affected by the proposed development, the Applicant will indicate appropriate mitigation measures, subject to the approval of the Director of Traffic and Parking, prior to the granting of a special permit.

18. Utilities. Utilities and wiring shall be placed below ground.
19. Research and Development Uses. Any use that creates any noise, glare, dust, vibration, fumes, odors, gases, smoke, vapors, emissions of noxious or hazardous materials or substances outside of the structure, or creates any pollution of water ways or ground water, or transmission of signals that interfere with radio or television reception, or creates hazards to safety or health are not permitted.
20. Parking Facilities. Where structured parking spaces are not accessory to a principal use on the same lot, the total square footage of such parking spaces shall be limited to occupy no more 40% of the total square footage of the net square feet developed on the site.

Section 16.7.1. – Additional Design Guidelines for PUD-C.

a. Street/Usable Open Space Facing Facades: Structures should front the sidewalk and the publicly accessible usable open space. Varied architecture should be created by using recessed or projected entryways, bays, canopies, awnings, residential balconies on second floor or above, and other architectural elements.

Where there are ground-floor residential uses, front porches are encouraged.

Where there are ground-floor commercial uses, they should include thirty-foot-wide commercial bays with independent entrances onto the street to create visual and pedestrian interest.

Non-residential ground floor façades should have a minimum 75% transparent material, and non-residential second floor facades should have a minimum of 40% transparent material. These openings should provide views into the building and should not be blocked by interior storage, non-artistic displays, or greater than 30% internally mounted signage.

b. Buildings in Context. The new or renovated design should interface with the adjacent Tufts Administration Building through appropriately applied features that frame outdoor open spaces and/or screen other utilitarian and service elements. Visible rear and side façades should maintain a similar character to the front façade of the building and the intended character of the surrounding district.

c. Exterior Building Materials. All visible portions of new buildings should use high quality, durable, and aesthetically appropriate exterior building materials. Particular attention should be paid where properties abut residential property. Predominant exterior building materials should include an appropriate combination of brick, glass, wood, artistically used metal, stone, or stucco.

d. Height Transitions. A transition in height should be established where new development adjoins low-rise residential properties.

e. Mechanicals. All rooftop-building systems, including wireless communications facilities, should be incorporated into the building form in a manner integral to the building architecture, including screening with materials that harmonize with buildings' exterior finishes.

f. Neighborhood-serving Uses. It is strongly encouraged that, should any non-residential use be included in a development, the mix of uses proposed for the site have an emphasis on neighborhood-serving retail uses and community enriching services.

g. New Buildings. Massing and height of new buildings should be articulated in a manner compatible with the physical character of the surrounding districts, particularly where a building abuts a residential property. Whenever possible, historical variety in the scale, rhythm, and relationship of buildings should be preserved.

h. Parking Entrances: Entrances to on-site, off-street parking should be designed to minimize conflict with pedestrian, bicycle and vehicular traffic.

i. Public Art. Installation of public art is encouraged to add visual interest and distinguishing features to landscaped or other public areas.

j. Signage. All signs should respect buildings' context and be oriented to pedestrians.

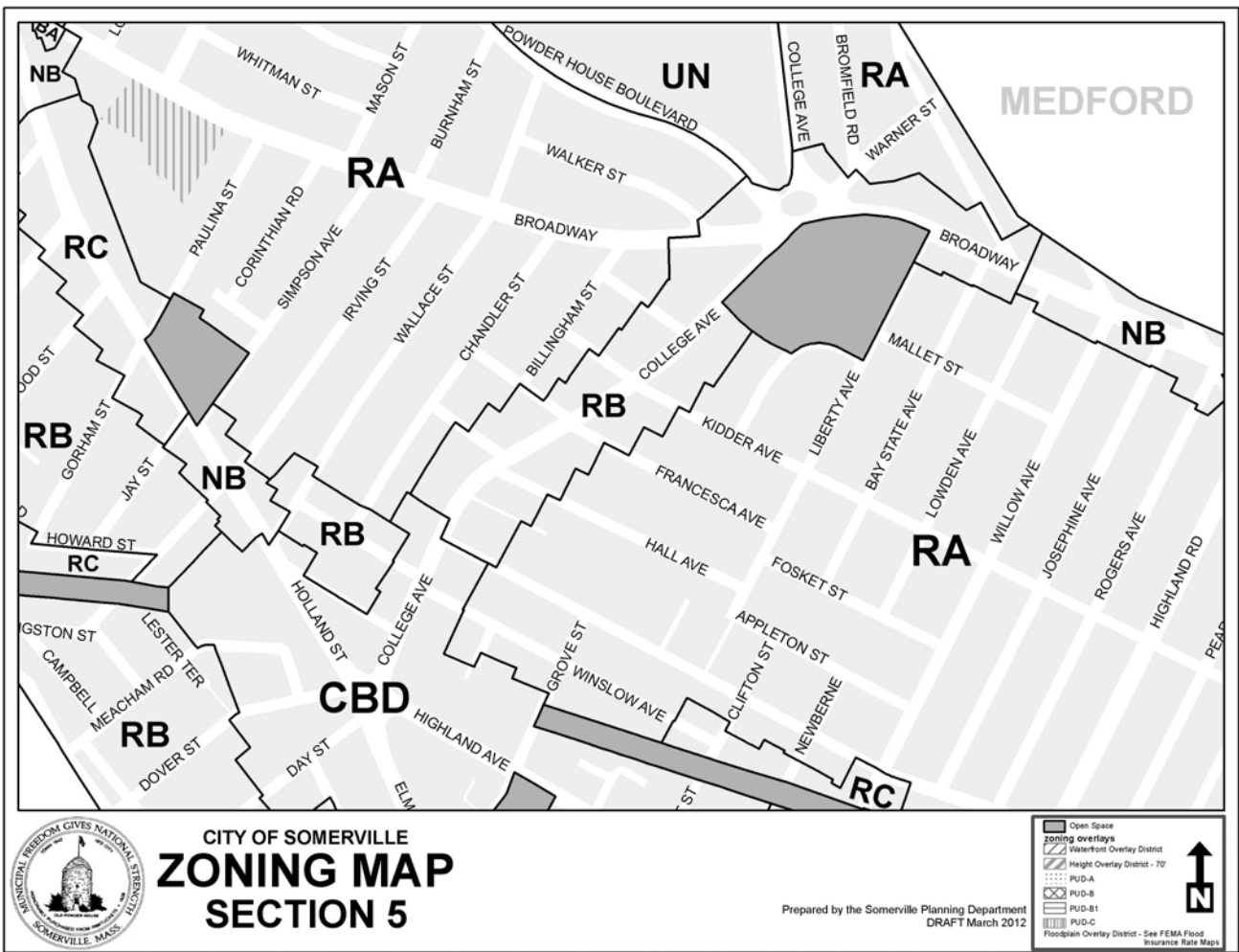
k. Park: The dedicated parkland/open space should a simple but elegant design, should be located to support public gathering (i.e. not hidden behind the development site), and be interconnected to the connection between Broadway and the TAB site. The parkland should include elements that meet the needs of the neighborhood and the community as well as the new development. The park shall be shaped to maximize its usefulness.

l. Parking: The project should investigate the opportunity to share parking between uses to minimize the amount of paved parking areas and/or garages. Also, car-share or flex-car spaces should be

incorporated into parking area where possible. Parking should be located underground, if possible. Parking may be located at-grade, underground or in parking decks that are shielded from adjacent residential property and the street by portions of the structure not being used for parking. Parking in decks or at grade should be designed so as to reduce their visibility from Broadway and from adjacent residential structures.

m. Connections: Any proposed development shall support improved access to surrounding neighborhoods by means of sidewalk connections, crosswalks, landscaping, traffic signalization and traffic calming methods.

n. Green Elements: Applicants shall demonstrate the project is capable of meeting LEED for buildings, LEED-ND, or a viable alternative standard for green building and neighborhood design. Whenever possible, green roofs should be incorporated into the project and should include gardens or usable features.



APPENDIX F
Sample Exclusive Negotiating Agreement

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (the “AGREEMENT”), is made and entered into this ____ day of _____, 2012, by and between the CITY OF SOMERVILLE, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, acting by and through its Office of Strategic Planning and Community Development (“OSPCD”) with a usual address of 93 Highland Avenue, Somerville, MA 02143 (“City”), and _____ a _____ duly organized and existing under G.L. c. _____ (“Developer”) (together, the City and the Developer are referred to as the “Parties”).

RECITALS

- A. The City has determined that it desires to encourage the redevelopment of the properly formerly known as the Powder House Community School by offering City-owned land to developers.
- B. On December ___, 2012, the City issued a Request for Proposals (“RFP”) to potential developers. On ___, the City received ___ submissions, which met the guidelines established in the RFP. After an evaluation of the proposals by a Technical Advisory Committee, which made recommendations to the Mayor, the Mayor determined that the proposal submitted by the Applicant provided the highest public benefit to the City.
- C. The City and the Applicant desire to enter into this Agreement to explore the possibility of redeveloping the Property.
- D. The City and the Developer recognize and acknowledge that the feasibility of the development proposed by Developer has not been determined to the satisfaction of the City and the purpose of this Agreement is to allow the City and Developer to undertake additional design, planning, and analysis to determine the feasibility of the proposed Project and to negotiate the terms of a Land Disposition Agreement for the Property.

NOW THEREFORE, the City and Developer agree as follows:

1. NEGOTIATIONS

1.1. Length of Negotiation Period

Unless terminated earlier in accordance with this Agreement, the period for negotiations between the Parties shall be ____ **days**, commencing on the date of this Agreement (the “Negotiation Period”); provided, however, that the Negotiation Period may be extended as provided in Section 6.4 of this Agreement.

1.2. Good Faith Negotiations

The City and Developer shall negotiate diligently and in good faith during the Negotiation Period toward a Land Disposition Agreement (“LDA”) wherein the City will agree to sell and the Developer will agree to purchase the Powder House Community School property (the “Property”) for a sum equal to or exceeding the appraised price of \$TBD. The Parties contemplate that the LDA will set forth the terms and conditions for the conveyance of the Property to Developer; and describe the Project that the Developer will be permitted to develop on the Property, the timeline within which it shall be developed, and subsequent uses of the Property by the Developer and any successors-in-interest. The Parties contemplate that negotiations regarding the LDA shall commence after execution of this Agreement and shall continue while the Developer submits to the City the information required herein and the Parties pursue preliminary design, planning and analysis of the Project. If the terms of a mutually satisfactory LDA have not been negotiated by Developer and OSPCD staff during the Negotiation Period, or if the Board of Aldermen declines to approve the LDA for any reason, then, without further action, this Agreement shall automatically terminate and neither Party shall have further rights or obligations to the other.

1.3. Exclusive Negotiations

The City shall not negotiate regarding development of the Property with any other person or entity during the Negotiation Period.

2. **GOOD FAITH DEPOSIT**

The sum of \$10,000.00 has been submitted to the City by the Developer simultaneously with the execution of this Agreement and shall be retained by the City as a Good Faith Deposit without any obligation on the part of the City to pay interest thereon. The Good Faith Deposit shall not be applied to any predevelopment expenses for the Project. If the Developer and the City enter into an LDA for the Project, the Good Faith Deposit shall be applied to the 10% deposit which shall be required under the LDA. If the Developer fails to reach agreement with the City, or the City otherwise declines to enter into an LDA, the Good Faith Deposit shall be returned to Developer; provided however, that if in the reasonable judgment of the Mayor, the Developer has failed to negotiate in good faith with the City, the City may, in its sole discretion, retain the Good Faith Deposit. The Parties agree that it would be impractical and extremely difficult to estimate the damages which the City may suffer in the event that 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 any such Developer default is and shall be the retention of the Good Faith Deposit as liquidated damages and as the City’s sole and exclusive remedy at law and in equity.

3. **SCHEDULE OF PERFORMANCE**

The Developer shall complete the following activities within the time periods set forth below, which time periods shall commence as of the date of the Agreement. Unless otherwise specified, the word “days” shall mean “calendar days”.

3.1 Conceptual Design

Within _____ **days**, the Developer and the Developer’s architect shall commence discussions with OSPCD regarding the proposed design of the project, including number of parking spaces, the height, siting, and massing of structures, landscaping and useable open space, and any ancillary commercial uses. Following preliminary discussions, OSPCD shall schedule a community meeting at which the Developer and the Developer’s architect shall be present to obtain public input.

Within _____ **days**, design discussions shall have progressed to a level sufficient to allow for the presentation of conceptual drawings at a public meeting or meetings to be scheduled by OSPCD at which the Developer shall present at least two alternative conceptual designs. Drawings shall include the following at a minimum: a site plan showing the proposed structure(s) on the site(s) with landscaping areas identified; elevations showing the facades and materials of the proposed structures; a parking plan; and a signage plan. The Developer shall also be prepared to provide the following information to OSPCD staff and to members of the public at public meetings:

- ancillary uses, such as retail, restaurants, and health clubs;
- green building elements and practices (including design elements and management, lodging and other operational practices);
- number and location of parking spaces
- management and pricing strategies to encourage shared use and reasonable turnover of parking spaces, and discourage “Park and Ride” use.
- construction phasing
- projected total amount of the real estate taxes and amount of new real estate taxes over and above Developer’s existing use;
- number and types (including pay ranges) of jobs expected to result from the hotel, parking facility and ancillary uses;
- neighborhood impacts, including traffic, noise, odor, lighting, and shadow effects, both during and after construction;
- public infrastructure improvements to be made by the Developer, including useable open space, traffic signals that may need to be replaced or installed; street lights that may need to be replaced or installed; sidewalk replacement; street tree planting; improvements to be made as mitigation; and other public improvements proposed by the Developer;
- analysis of how the project conforms to the Somerville Zoning Ordinance and what zoning relief, if any, is required;
- public art to be incorporated as part of the project.

If the Developer is unable to achieve a conceptual design that is satisfactory to the City by the end of _____ **days**, the Mayor may, in his sole discretion, notify the Developer that the City does not intend to proceed with the disposition process, whereupon this Agreement shall automatically terminate and neither party shall have any further rights or obligations hereunder.

3.2 Environmental Review/Zoning Permits/Title

Within _____ **days**, the Developer shall retain:

- c) an environmental engineering firm and licensed site professional (LSP) and commence environmental due diligence, including the preliminary site assessment typically required to obtain financing for a project;
- d) an attorney who shall commence preparation and submission of permit applications for all zoning relief required under the Somerville Zoning Ordinance, including an application for a building permit to trigger the denial required as a pre-condition to filing an application for zoning relief.
- e) a title examiner and a title insurance company to prepare a title abstract and issue a title insurance policy for the Property.

By the end of the Negotiation Period, as such Negotiation Period may be extended pursuant to Section 6.4 this Agreement, the Developer shall have completed to Developer's satisfaction all environmental due diligence; shall have obtained all zoning approvals; and shall have determined title is good record, marketable, and insurable title.

3.3 Financing, and Other Submissions

Within _____ **days**, Developer shall submit to the City the following:

- (a) A description of the specific financial structure and legal structure of the proposed development in a form that reasonably satisfies the City that the Project is feasible. This shall include a written description of the specific and general roles, responsibilities, and obligations of the Developer, the Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project. Additionally, the written description of roles, responsibilities, and obligations shall identify the principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.
- (b) Copies of balance sheets and income/loss statements, prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by the City covering the last two years for the Developer, the Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project.
- (c) A written statement concerning any litigation in which Developer or Developer's partners or members is a party that may have an impact on the negotiations. Developer shall provide to the City copies of any litigation documents or filings in connection with such litigation within _____ business days of the City's written request.
- (d) A list of lenders and investors the Developer will approach for financing the project.
- (e) All documents related to its corporate, LLC, or partnership status, and the status of its members or partners, including but not limited to articles of incorporation, by-laws, partnership agreements, operating agreements, joint venture agreements, lists of members of board of directors, and

certificates of good standing from the Mass/ Department of Corporations and the Mass. Department of Revenue.

- (f) Outline specifications, a preliminary construction cost estimate based on the submitted schematic design plans, and a proposed construction schedule.
- (g) Detailed and itemized project pro formas that are linked to the schedule for construction and operation of the Project. Pro formas shall include a Project development budget, a statement describing the sources and uses of funds, a cash flow analysis, and an operating budget to a level of detail reasonably acceptable to the City.
- (h) Letters of intent from lenders and equity partners, if any, expressing willingness to provide Project financing.

3.2 Monthly Reports

The Developer shall provide the City with written monthly progress reports on all matters pertaining to the Project, including updates and changes to financing, program, design, or pro formas previously submitted to the City.

4. CITY APPROVAL OF DEVELOPER SUBMISSIONS

Within _____ business days after the City receives any information or documents required to be submitted by the Developer pursuant to Section 2 of this Agreement, the City shall inform the Developer of its acceptance or rejection of the submission. The City may approve those portions of a submission that are satisfactory and reject those portions that are not, or may approve all or a portion of a submission subject to conditions requiring further submissions for City review and approval. If the City rejects all or any part of a submission, the City shall provide to the Developer written notice of the reasons for such rejection within said _____ days. The Developer shall then have _____ business days to correct or supplement its submission to respond to the City's rejection. If the City has not responded to a submission by the Developer within _____ business days of submission, such submission shall be deemed approved by the City.

5. EFFECT OF NEGOTIATIONS

The Developer understands and acknowledges that any LDA resulting from the negotiations arising from this Agreement shall become effective only if and only after such LDA has been approved by the Somerville Board of Aldermen and executed by the Mayor. The Developer understands that the Board of Aldermen and the Mayor retain the sole and absolute right to approve or not approve the sale of the Property. If the terms of a mutually satisfactory LDA have not been negotiated by the Developer and OSPCD staff during the Negotiation Period, as it may be extended if extended, or if the Board of Aldermen declines to authorize an LDA for any reason, then, without further action, this Agreement shall automatically terminate and neither Party shall have further rights or obligations hereunder.

6. TERMINATION AND EXTENSIONS

6.1 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 Agreement shall be considered a material breach of this Agreement.

6.2 Notice to Developer of Breach

In the event that Developer fails to materially perform any of Developer's obligations pursuant to the terms and conditions of this Agreement within the time herein specified, the City shall promptly give the Developer notice of such default. The Developer shall have a period of _____ business days from receipt of such written notice from the City to Developer within which to cure such default if such default is capable of being cured by Developer; provided, however, that with respect to any default capable of being cured by Developer but which cannot be cured by Developer within such _____ business day period, the default shall not be deemed to be uncured if Developer commences to cure within such ten _____ business day period and diligently prosecutes the cure to completion.

6.3 Termination Upon Developer Default

If the Developer fails to cure any material default during the cure period described above, this Agreement shall be terminated upon written notice of termination from the City, and thereafter neither Party shall have any further rights or obligations thereunder, except for the City's right to retain the Good Faith Deposit as more particularly described herein.

6.4 City Discretion to Extend Time for Performance

Notwithstanding the above, if the Mayor determines that it is in the best interest of the City, the Mayor may extend the time for Developer's performance of any of the terms and conditions of this Agreement. Any extension shall be granted in the Mayor's sole and absolute discretion, and in no event shall this provision be construed as conveying any right or entitlement to an extension.

6.5 Default by City

In the event that the City fails to perform any provision under this Agreement, the Developer shall have the right to terminate this Agreement and obtain a refund of the Good Faith Deposit. Upon termination of this Agreement, neither Party shall have any further rights or obligations hereunder except for Developer's right to recover the Good Faith Deposit. In no event shall Developer be entitled to any damages, of any kind or character, from the City.

7. LIMITATIONS

This Agreement does not obligate the City to transfer the Property to the Developer or any other person, nor does it obligate the City to approve the Project or any other project. Developer acknowledges and agrees that no City commitment to move forward with the Project can be made other than by resolution of Board of Aldermen and adoption of any such resolution shall be at the sole and absolute discretion of said Board of Aldermen. Any costs incurred by Developer, Developer's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate the LDA shall be the sole responsibility of the Developer, and in no event shall the City have any responsibility to pay for or reimburse the Developer for any of said costs.

The 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 Property, the Project, the Developer, and this Agreement available to the public upon request as required by said laws.

8. NON-DISCRIMINATION

The Developer agrees that there shall be no discrimination against, or segregation of, any person, or group of persons, on account of sex, race, color, age, marital status, religion, disability, creed, national origin, ancestry, or sexual orientation in the construction, operation use, or occupancy of the Property, nor shall Developer establish or permit any such practice or practices of discrimination or segregation with reference to employees or invitees of the Property.

9. NO ASSIGNMENT

This Agreement is personal to the Developer and is not assignable to any other person or entity/without the prior written consent of the City. Any attempt to assign this Agreement or any part of the Agreement without the prior written consent of the City shall constitute a breach of this Agreement and shall be void and of no force and effect. Notwithstanding the above, this Agreement may be assigned to an affiliated partnership or a limited liability company provided that the Developer is either the general partner or managing member of the assignee entity.

10. RIGHT OF ENTRY

The Developer and its agents, contractors and representatives shall have the right to enter upon the Property at any time during the Negotiation Period to conduct investigations, tests, topographical surveys, appraisals, and studies, including geotechnical studies, soils tests and environmental site assessments. The Developer shall not alter the Property except as needed to conduct the testing and other activities thereon as authorized by this Agreement, and the Developer agrees upon completion of any testing or other activity under this Agreement to remove all debris, litter, equipment, and other materials placed on the Property by the Developer and its agents, and to restore the Property as much as reasonably possible to its original condition. A minimum 48 hours of advance notice shall be provided to the City by the Developer if activities will have any impact upon access to or use of existing public parking spaces.

The Developer shall indemnify, defend and hold the City harmless from any and all claims, demands, damages, losses, actions, liabilities, causes of action or judgments, including reasonable attorney's fees, which the City may incur or be required to pay by reason of entry onto the Property and activities thereon by Developer or Developer's agents, employees, contractors or consultants, including, without limitation, any damages, injury or death to any person or property suffered by any person, firm or corporation, except to the extent the same are attributable to the negligence or willful misconduct of the City or any person or entity acting on the City's behalf or under the City's authority. Notwithstanding any other provision of this Agreement, Developer shall have no liability to the City or any other party by reason of, nor shall Developer have any duty to indemnify, defend or hold any person harmless from or against, any claim, demand, damage, loss, action, liability, cause of action or judgment, including without limitation, any claim for diminution in value of the Property or for environment remediation or clean-up costs, arising out of or in connection with the mere fact of having discovered and/or reported any adverse physical condition, title condition or other condition or defect with respect to the Property. For the duration of this Agreement, Developer shall cause the City to be named as an additional insured on applicable commercial general liability insurance policies with coverage of at least one

million dollars (\$1,000,000) and shall cause certificates of such insurance to be delivered to the City. The protection afforded by such insurance shall not be limited by the liquidated damages provisions of this Agreement.

Notwithstanding any other provision in this Agreement, this right of entry shall not relieve the Developer from the necessity of obtaining any applicable governmental approvals or permits that may be necessary to perform such tests or conduct other activities on the Property.

11. INFORMATION

Upon Developer’s request, the City shall promptly furnish the Developer all material information within its possession or control concerning the Property, including without limitation, copies of all topographical surveys, environmental reports, engineering studies, soil-bearing test data, and any similar reports and studies with respect to the Property.

12. NOTICES

All notices under this Agreement shall be sufficiently given if delivered, faxed (but only if simultaneously served by another method herein specified), or mailed by registered or certified mail, postage prepaid, addressed to:

DEVELOPER:

CITY:

If mailed, the written notice shall be deemed received and shall be effective _____ business days after deposit in the United States mail in the Commonwealth of Massachusetts or upon actual receipt by the addressee if earlier.

13. GOVERNING LAW

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

14. COUNTERPARTS

This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

SIGNATURES ON NEXT PAGE

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

“CITY”

By: _____
Its: Mayor

Approved as to form:

By: _____
City Solicitor

“DEVELOPER”

By: _____

Its: _____

APPENDIX G
Sample Land Disposition Agreement

LAND DISPOSITION AGREEMENT

This Land Disposition Agreement (“LDA”) dated this ____ day of _____, 2013, is made by and between the City of Somerville, a body corporate and politic and a political subdivision of the Commonwealth of Massachusetts, with usual offices at 93 Highland Avenue, Somerville, MA (“City” or “Seller”), acting by and through the Mayor’s Office of Strategic Planning and Community Development (“OSPCD”) and _____, a _____ duly organized and existing under Chapter _____ of the Commonwealth, with usual offices at _____
(the “Buyer”)

In consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Buyer hereby agree as follows:

A. PROPERTY

The City agrees to sell to Buyer and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth all the City’s right, title and interest in _____ parcel(s) of land located at _____ (the “Property”), more particularly described in EXHIBIT A attached hereto and incorporated as part of this LDA.

B. PURCHASE PRICE

The agreed purchase price for the Property is _____ Dollars (\$ _____) of which:

- \$ 10,000.00 was paid upon execution of an Exclusive Negotiating Agreement; and the balance of ten percent (10%) of the Purchase Price is paid herewith.
- \$ _____ Subtotal (the “Deposit”); and
- \$ _____ is to be paid at the time of delivery of the Deed by wire transfer in accordance with the City’s instructions.
- \$ _____ Total (the “Purchase Price”).

C. DEPOSIT

The Deposit shall be held in escrow by the OSPCD Director of Administration and Finance (“Escrow Agent”), subject to the terms of this Agreement. The Escrow Agent shall be liable only for willful default or misconduct. In the case of a dispute, the Escrow Agent shall retain the Deposit pending written receipt of instructions signed by both the City and the Buyer, or Court Order. The City shall have no obligation to pay interest on the Deposit to the Buyer.

If the Buyer fails to purchase the Property on the Closing Date, the Deposit and any interest thereon shall be retained by the City as the City’s sole remedy at law and in equity.

D. DEED

The City shall convey its right, title and interest in the Property to the Buyer by a Quitclaim Deed in the form attached as EXHIBIT B (“Deed”). The Deed shall convey good, clear record and marketable title to the Property, free from all encumbrances except for:

1. provisions of then existing laws, rules, and regulations, including without limitation, building, zoning and environmental laws;
2. any liens for municipal betterments first assessed after the date of this LDA;
3. real estate taxes or PILOT payments not yet due and payable;
4. rights, easements, restrictions, and reservations of record, if any;
5. any provisions of this LDA, that, by their terms, survive the Closing Date.
6. The Deed from the City to the Buyer will include the following restrictive covenants, which shall run with the land and be binding upon the grantee and the grantee’s successors and assigns: a) that there be no material change in development concept at the Property for a period of twenty (20) years from the Date of Closing unless the City has given its prior written consent to such change; and b) that there be no transfer of title to a tax-exempt owner unless the City has given its prior written consent to such transfer and the City may condition its consent upon the tax-exempt owner’s entering into a Payment in Lieu of Taxes (“PILOT”) Agreement. The consent of the “City” shall mean the consent of both the Mayor and the Board of Aldermen.

E. TIME FOR PERFORMANCE/DELIVERY OF THE DEED

The Buyer, or a nominee approved by the Somerville Board of Aldermen (“BOA”)) shall acquire the Property by accepting delivery of the Deed from the City and paying the balance of the Purchase Price to the City on or before _____, 2013 (“Closing Date”) at City Hall or such other place as may be mutually agreed upon by the parties. Time is of the Essence of this Agreement. The City will not deliver the Deed prior to the Developer securing zoning relief, building permit, and financing commitment.

F. ACCEPTANCE OF THE DEED

The acceptance of the Deed to the Property by the Buyer and the payment by the Buyer of the Purchase Price shall be deemed a full performance by the parties hereto and shall discharge every agreement and obligation of the parties herein contained, except such as, by the express terms of the LDA are to survive the Closing Date.

G. CONDITION OF THE PROPERTY ON THE CLOSING DATE

On the Closing Date, the Property shall be conveyed “as is”, in substantially the same condition as it is as of the date hereof, reasonable wear and tear excepted.

H. USE OF PURCHASE MONEY TO CLEAR TITLE

To enable the City to make conveyance, City may, at the Closing Date, use the purchase money or a portion thereof to clear the title of any or all encumbrances, provided that all instruments so procured are recorded promptly after the delivery of the Deed.

I. BROKER’S FEE

The City and the Buyer each represent and warrant to the other that neither has dealt with any real estate broker or other person who would be entitled to be paid a commission by reason of the procurement of this Agreement or the sale of the Property, and each agrees to defend, indemnify and hold the other harmless from and against any loss, damage or expense arising out of any breach by the indemnifying party of such representation and warranty. These warranties, representations, and indemnifications shall survive the delivery of the Deed.

J. CONSTRUCTION OF THE PROPOSED DEVELOPMENT

Buyer acknowledges that the City has agreed to sell the Property to Buyer so that Buyer can construct at the Property a project (“ the Project”), consisting of the use program described in a proposal submitted by the Buyer to the City in response to a publicly advertised disposition process.

1. Development Team: The Buyer’s Development Team shall consist of :
 - a. *Applicant*:
 - b. *Attorney*:
 - c. *Architect*:
 - d. *Engineer*:
 - b. *Lender(s)*:
 - c. *Equity Partners*
2. Description of the Project. The Project is described in the Buyer’s proposal. The Buyer shall develop the Property substantially in accordance with such proposal as modified to comply with Planning Board and/or Somerville Board of Zoning Appeal requirements.
3. Development Milestones. Buyer shall commence and complete construction of the Project within thirty-six (36) months after the Closing Date. Construction shall be phased as described in EXHIBIT C.
4. Force Majeure. Notwithstanding the foregoing, the Buyer shall not be in default of this Agreement for failure to meet development milestone dates if such failure is due to a cause beyond the Buyer’s reasonable control, such as a flood, earthquake, fire, epidemic, or material shortages resulting from strikes and/or freight embargoes. It is the intent of this section that, in such event or events, such date(s) shall be extended for the period of the enforced delay; provided, however, that the period of the extension and the reasons therefore shall be in writing signed by both parties. The City shall not unreasonably withhold or delay its written consent to such extension.
5. Security for Performance. The Buyer shall obtain from the general contractor for the Project, performance and payment bonds in the amount of 100% of the contract price naming the City of Somerville as an additional obligee. In addition, the Buyer shall post a bond or letter of credit or other security satisfactory to

the City in the amount of \$ _____ to secure performance of the Buyer's obligation to construct the Project.

6. Survival. This Section J shall survive the Closing Date.

K. IDENTITY OF BUYER AND DEVELOPMENT TEAM /PROHIBITION AGAINST CHANGE OF USE.

1. The Buyer represents that it is acquiring the Property for purposes of development and not for speculation.
2. The Buyer acknowledges that, in view of the importance of the undertakings set forth herein to the general welfare of the community, the identity of the Buyer is material.
3. The Buyer covenants not to transfer the Property without the City's prior written consent until such time as the Project has been fully constructed and a certificate of occupancy has been issued.
4. The Buyer covenants not to make any material change in the development concept as set forth in the Buyer's Proposal (as modified to comply with Planning Board and/or Somerville Board of Zoning Appeal requirements) for twenty (20) years from the Date of Closing.
5. The covenants contained in this Section K are expressly stated to be covenants which shall survive the Closing and run with the land. They shall be stated or incorporated by reference in any instrument of conveyance or lease relating to the Property or any portion of the Property. They shall, to the fullest extent permitted by law and equity, be binding for the benefit of the City and be enforceable by the City against the Buyer and the Buyer's successors and assigns.

L. ACQUISITION AND DEVELOPMENT FINANCING.

The Buyer represents that it has adequate financial resources to acquire the Property and to construct the Project and shall deliver upon execution of the LDA and again at the Closing Date, current versions of the financial statements and pro formas provided by the Buyer under an Exclusive Negotiating Agreement ("ENA") dated _____, demonstrating to the reasonable satisfaction of the City that the Buyer is in stable financial condition, not the subject of nor threatened with a bankruptcy, receivership, assignment for the benefit of creditors or other insolvency type proceeding, and is financially capable of developing the Project as contemplated by this Agreement.

M. ENVIRONMENTAL TESTING /TITLE / PERMITS AND APPROVALS

During the Exclusive Negotiating Agreement period: (1) the Buyer tested the Property for the presence of oil and hazardous materials and substances and expressly waives any objection to closing based on the environmental condition of the Property; (2) the Buyer conducted a title examination and expressly waives any objection to closing based on issues related to title; and (3) the Buyer obtained all permits and approvals needed to construct the Project and expressly waives any objection to closing based on permits and approvals.

N. DEFAULT/TERMINATION/REMEDIES.

If the Buyer is in default in its obligations, other than any default which is governed by Section C of this Agreement, the City shall send written notice of such default, stating what actions are required to cure the default and stating the time period within which the default must be cured. If the Buyer fails to promptly take

and diligently pursue action designed to cure the default, or if the default is not cured within _____ days of receipt of written notice of default, or if a default cannot with due diligence be cured within _____ days and Buyer does not commence the cure of such default within such _____ days and thereafter diligently prosecute the same to completion, the City may avail itself of any and all remedies, including without limitation, enforcing the bonds of the general contractor, looking to the letter of credit, bond, or other security provided by the Buyer to secure the Buyer's performance, or bringing an action for damages and/or to enjoin or compel specific performance. No delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this section shall operate as a waiver of such rights or limit such rights in any way. The City shall not, because of concepts of waiver or laches or otherwise, feel constrained to exercise such remedy at a time when it may still hope to resolve by other methods the problems created by the default; nor shall the City's waiver of any specific default be treated as a waiver of the City's rights with respect to any other default or, for that matter, as a waiver with respect to the particular default. This Section shall survive the Date of Closing.

O. NOTICE

All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mailed postage prepaid, by registered or certified mail, or by Express Mail or FedEx or other nationally recognized delivery service with tracking capability, addressed

in case of the City to:

and in the case of the Buyer to:

or to such other address as shall be designated by written notice given to the other party. Any such notice shall be deemed given when so delivered by hand or upon mailing.

P. REPRESENTATIONS AND WARRANTIES

1. The Buyer represents and warrants and delivers herewith an opinion of its legal counsel, that the Buyer is a _____, organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts; that the Buyer has the legal right, power and authority to enter into and perform all of its obligations under this Agreement; and that the individuals executing this Agreement have been duly authorized to execute the same on behalf of and to bind, the Buyer.
2. The Buyer represents and warrants that the execution of this Agreement and compliance with its terms will not conflict with or result in a breach of any agreement, contract, law, judgment, order, writ, injunction, decree, rule or regulation of any court, administrative agency or other governmental authority of which the Buyer has knowledge or notice, or any other agreement, document or instrument by which the Buyer is bound. The Buyer further represents and warrants that there are no claims, lawsuits or proceedings pending in any court or government agency the outcome of which could materially and adversely affect the Buyer's ability to perform its obligations under this Agreement.
3. The Buyer acknowledges that the Seller has made no representations or warranties regarding the Property.

Q. CLOSING DOCUMENTS/ADJUSTMENTS TO THE PURCHASE PRICE

The City shall execute and deliver closing documents reasonably and customarily required from a seller of real property in the Commonwealth of Massachusetts, as requested by Buyer’s or Buyer’s mortgagee’s counsel. The following charges shall be adjusted as of the Date of Closing and added to or deducted from the Purchase Price, as the case may be: 1) any water and sewer use charges; 2) any outstanding oil, gas, or electric for the Property; and 3) tax due from the Buyer under G.L. c. 59, s.2C.

R. MISCELLANEOUS PROVISIONS

1. This Agreement shall be binding on the Buyer’s successors and assigns.
2. This Agreement shall be governed by Massachusetts law, shall be construed as a Massachusetts contract, shall take effect as a sealed instrument, and shall be modified or amended only by a written instrument executed by the City and the Buyer and approved by the Board of Aldermen.
3. Captions are for convenience only and shall not limit the scope or substance of this Agreement.
4. Time is of the essence of this Agreement.
5. No official or employee of the City of Somerville shall have any personal interest, direct or indirect, in this Agreement or in the Buyer, nor shall such officials or employees participate in any decision relating to this Agreement which affects their personal interest or the interests of any corporation, partnership, or association in which they are, directly or indirectly, interested. No official or employee of the City of Somerville shall be personally liable to the Buyer or any successor in interest in the event of any default or breach by the City of Somerville or for any amount which may become due to the Buyer or to its successor or on any obligations under the terms of this Agreement.
6. Wherever the consent or approval of the City is required herein, it shall mean the consent or approval of both the Mayor and the Board of Aldermen.
7. This LDA shall be recorded at the Middlesex South District Registry of Deeds.
8. This LDA may be executed in multiple counterparts, each of which shall be treated as an original.

SIGNATURE PAGE FOLLOWS

- Exhibit A - Property Description
- Exhibit B – Form of Deed
- Exhibit C - Construction Phasing
- Exhibit D - Disclosure Statement under G.L. c. 7, §40J

EXECUTED under seal on the day and year first written above.

CITY OF SOMERVILLE

BUYER:

By: _____
Joseph A. Curtatone
Its: Mayor

By: _____
Its:

Approved as to form: _____
City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2013, before me, the undersigned Notary Public, personally appeared the above-named Joseph A. Curtatone, Mayor of the City of Somerville, proved to me by my own knowledge of the identity of the signatory to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose as Mayor of the City of Somerville.

Notary Public
My Commission Expires:
Qualified in Massachusetts

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of _____, 2013, before me, the undersigned Notary Public, personally appeared the above-named _____, the _____ of _____, _____, proved to me by my own knowledge of the identity of the signatory to be the person whose name is signed above, and acknowledged the foregoing to be signed by _____ voluntarily for its stated purpose as _____.

Notary Public
My Commission Expires:
Qualified in Massachusetts

APPENDIX H

CERTIFICATION OF GOOD FAITH
Pursuant to G.L. c. 30B, §10

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Name of person signing bid or proposal)

(Name of Business)

(Signature)

APPENDIX I

DISCLOSURE STATEMENT
Acquisition/Disposition of Real Property

The undersigned does hereby file the following statement with the Commonwealth of Massachusetts Division of Capital Asset Management (DCAM) for the purpose of disclosure pursuant to section 40J of Chapter 7 of the General Laws of Massachusetts:

REAL PROPERTY:

SELLER () LESSOR ():

BUYER () LESSEE ():

TERMS: Purchase Price:
 Closing Date:
 Other:

Listed below are the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the Property. There is no person with a direct or indirect beneficial interest in the property who is either an official elected to public office in the City of Somerville or an employee of the City of Somerville.

_____ of _____
_____ of _____
_____ of _____

Name: _____

By: _____

Title: _____