

LEGAL MEMORANDUM
PRIVILEGED AND CONFIDENTIAL

To: DUSPA Finance Committee
From: Bookhardt & O'Toole
Date: August 31, 2010
Re: Summary of Amendment to Master Development Agreement
Matter: DUSPA/General

Below is the summary of USNC's Master Development Agreement Amendment that is being presented for review by the Finance Committee. Finance Committee action must be taken to approve the agreement.

1. **Master Development Agreement Amendment** between DUSPA and Union Station Neighborhood Company, LLC (the "Developer") amends the Development Agreement dated August 7, 2009 (the "Original Agreement") to include certain federal requirements that are necessarily included in agreements that are eligible for receipt of federal funds. This Amendment essentially becomes effective as of the date of the Original Agreement, August 7, 2009. A synopsis of the federal requirements that have been included in this Amendment are as follows:
 - a. Certification of the Developer that no federal funds have been paid to any person to influence the officers or employees of any agency or member of Congress;
 - b. Developer agrees to allow access to books, documents, papers and records that are directly pertinent to the project;
 - c. Developer agrees to maintain books and records for a period of three years after the date of termination of the agreement;
 - d. Developer will comply with applicable federal regulations as communicated to Developer by the Partner Agencies or DUSPA;
 - e. Developer agrees that the federal government is not a third party to the agreement;
 - f. Developer agrees not to commit fraud and certifies the truthfulness of statements it has made pertinent to the TIFIA Loan Agreement;
 - g. Developer accepts a d/b/e goal of 7.5% under its agreement and agrees to not commit any acts that would cause DUSPA to be in violation of the FTA terms and conditions.

Board Action: The Finance Committee has reviewed this amendment for approval and presentation to the Board on September 2, 2010, pending resolution of d/b/e goal.

FIRST AMENDMENT TO
MASTER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT, dated September __, 2010 (the "Amendment") is by and between the Denver Union Station Project Authority, a Colorado nonprofit corporation (the "Authority"), and the Union Station Neighborhood Company, LLC, a limited liability company organized under the laws of the State of Colorado (the "Developer").

WITNESSETH:

WHEREAS, the Authority and the Developer entered into a Master Development Agreement dated as of August 7, 2009 (the "Master Development Agreement"); and

WHEREAS, the Authority and the Developer desire to amend certain provisions of the Master Development Agreement in connection with the receipt by the Authority of certain federal funds, as further set forth herein; and

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained and contained in the Master Development Agreement, the Authority and the Developer agree as follows:

Section 1. The Master Development Agreement is amended as follows:

A. The Master Development Agreement is hereby amended by the addition of Article 13.

Article 13. Federal Requirements.

By entering into this Amendment, the Developer hereby certifies to the truthfulness and accuracy of each statement of any certification and disclosure as set forth in Exhibit E hereto and the Developer understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to the certification and disclosure as set forth in Exhibit E hereto. The Developer also agrees that those provisions set forth in Exhibit E hereto are hereby incorporated by reference as though fully set forth herein.

B. The Master Development Agreement is hereby amended by the addition of Exhibit E.

EXHIBIT E

CERTIFICATIONS AND FEDERAL REQUIREMENTS

Lobbying

The Developer certifies, to the best of its knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

Access to Records and Reports

The following access to records requirements apply to this Agreement:

1. The Developer agrees to provide the Owner, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Developer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Developer also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Developer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Owner is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Developer agrees to provide the Owner, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Developer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Owner enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Developer agrees to provide the Owner, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Developer which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Owner which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Developer shall make available records related to the contract to the Owner, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Developer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Developer agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in

which case Developer agrees to maintain same until the Owner, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

Developer shall at all times comply with all applicable federal regulations, policies, procedures and directives as they may be amended or promulgated from time to time during the term of this contract as they are communicated to Developer by any of the Partner Agencies or Owner.

No Government Obligation to Third Parties

(1) The Owner and Developer acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Owner, Developer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Developer agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Developer acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Developer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Developer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Developer to the extent the Federal Government deems appropriate.

(2) The Developer also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or

certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Developer, to the extent the Federal Government deems appropriate.

(3) The Developer agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Government-Wide Debarment and Suspension (Nonprocurement)

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Developer verifies that none of the Developer, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Developer shall comply with 49 CFR 29, Subpart C and agrees to include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this Agreement, the Developer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Owner. If it is later determined that the Developer knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Developer agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement or any contract that may arise therein. The Developer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Disadvantaged Business Enterprise (DBE)

1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of [____] has been established for this Agreement.¹

2. The Developer shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Developer shall

¹ An independent DBE contract goal shall be established for the design/redevelopment of the DUS Historic Station.

carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Developer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DUSPA deems appropriate. Each subcontract the Developer signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

3. The Developer is required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:

- a. The names and addresses of DBE firms that will participate in this contract;
- b. A description of the work each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- e. Written confirmation from the DBE that it is participating in the contract as provided in the prime Developer's commitment; and
- f. If the contract goal is not met, evidence of good faith efforts to do so.

Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Developer shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

Section 2. The amendments to the Master Development Agreement made by this Amendment shall become effective as of the date of the Master Development Agreement, nunc pro tunc.

Section 3. Except as specifically amended hereby, all of the terms and conditions of the Master Development Agreement shall remain in full force and effect unamended hereby. This Amendment may be executed in any number of counterparts and by separate parties hereto on separate counterparts, each of which when executed shall be deemed an original, but all such counterparts taken together shall constitute one in the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Master Development Agreement to be executed as of the day and year first above written.

DENVER UNION STATION PROJECT
AUTHORITY or "OWNER"

By: _____
Title: _____

UNION STATION NEIGHBORHOOD
COMPANY, LLC or "DEVELOPER"

By: _____
USNC, Inc., its Manager
Title: Managing Director

UNION STATION ADVOCATES

Citizen participation in planning and governance of the public spaces at Denver Union Station

Resolution of the Board of Union Station Advocates Regarding DUS Urban Design Package 2A

Whereas, maintaining and enhancing the connection between the Lower Downtown Historic District ("LoDo District") and the Central Platte Valley ("CPV") has always been high priority for property and business owners in the LoDo District and the CPV to provide financial and social benefits to local businesses, residents, visitors and tourists as well as encourage use of transit now and in the future; and

Whereas, prior city planning and the DUS master plan originally contemplated an extension of the street grid at grade by placing rail underground on 18th St. from the LoDo District into the CPV providing a critical connection for pedestrians and vehicles where none currently exists between 16th St. and 20th St. due to barriers created by rail service into Union Station; and

Whereas, due to the cost prohibitive nature and complex engineering and safety issues of the required steep incline of an 18th Street grid extension at grade, that plan was abandoned and replaced with the 18th St. Pedestrian Bridge and Kinetic Plaza design that would at least allow for a critical pedestrian and bicycle connection; and

Whereas, while the notion of a street connection was thus lost, it was replaced by an attractive pedestrian connection that included Kinetic Plaza with the intention that it would draw people to the elevated Plaza from both Wynkoop and Wewatta Plazas, thereby still encouraging the LoDo District /CPV connection at 18th Street; and

Whereas, the Kinetic Plaza was also created to serve as a critical public space amenity for the DUS project and was intended to establish not only a sense of place over the commuter rail with interesting views of Union Station and rail operations below, but also provide necessary access to the commuter rail platforms below and the adjacent planned private development building on Block B; and

Whereas, with the likelihood that part of the adjacent private development on Block B has been eliminated, the Kinetic Plaza as originally planned has been removed from the design and the Urban Design Package 2A now shows in its place only a utilitarian pedestrian bridge that has been value engineered to such a degree that its design and function as a desirable pedestrian connection has been seriously compromised, and

Whereas, Union Station Advocates strongly believes that general design objectives for DUS must still emphasize the creation of a strong sense of place on this critical bridge connection over the commuter rail lines and its respective staircases on either side to fulfill the original design intent of a highly functional pedestrian connection that attracts people and encourages lively interaction between the LoDo District, Union Station and the CPV; and

Whereas, there are certain design changes that could be made to enhance the function, sense of place and attraction for use of this critical connection such as:

To the elevated bridge structure which, in its current design, appears to be a long, narrow uninviting utilitarian structure with chain link/metal fencing material that lends a cage-like feel to the experience of walking through, the following changes could be made:

- Widen the proposed 15' walkway to at least 20' to help create an interesting destination similar to the original Kinetic Plaza design,
- Place convenient seating strategically at key locations along the walkway to attract pedestrians and encourage uses other than a straight walkthrough zone,
- Provide an overlook area with benches above the pedestrian zone between historic building and commuter rail platforms creating an elevated space to view the CPV façade of Union Station, pedestrian activity below and commuter rail entering and exiting the station.
- Replace the chain link/metal fencing with a more appealing and transparent material to enhance the pedestrian experience and open up views.

To the connecting staircases on either side of the elevated bridge structure which, in their current design, are too utilitarian and narrow, and especially in the case of the Wynkoop Plaza side, enters the plaza in an awkward recessed manner with several small steps at the bottom which do nothing to encourage people to ascend to the bridge above, the following changes could be made:

- On the Wynkoop Plaza staircase :
 - Reincorporate high architectural and artistic quality into its design as originally intended due to its prominent location,
 - Widen the entire staircase and extend it further into the plaza,
 - Enlarge the three landings of the stairway to encourage ease of use and allow a more gradual transition from the plaza to the bridge,
 - Center the upper landing on the existing doorway at the north end of the historic Union Station building, and
 - Enlarge the lower landing with stairs elongated around the base and extend them further into the plaza to create a useable area and a welcoming invitation to the bridge above.
- On the west side staircase, improve the pedestrian experience by widening it and angling its base toward the sidewalk that connects to the 18th Street pedestrian bridge.
- Add a new staircase on the west that lands in the area between the commuter rail platforms and Wewatta Plaza connecting the bridge to the 17th St. Promenade and facilitating an additional pedestrian connection between the LoDo District and the LRT stop in the CPV better serving LRT riders such as those attending Rockies games.
- Enlarge the area at the top of these new stairs at the Wewatta Plaza side to create an observation area into the CPV and design this area to allow for the future building on Block B to enclose the staircase.

Therefore, Be It Resolved That Union Station Advocates requests the Denver Union Station Project Authority strongly consider the above changes to the pedestrian bridge design and its respective stairways and other vertical connections prior to submittal for final approval of these elements by the Denver Planning Board and allow the necessary further time for study and additional public input to be certain that the ultimate design of these elements meet the original design and functional intent as closely as possible.

Adopted on this Monday, July 26th, 2010



Anne Hayes, Chair

Distribution List (by email):

Denver Union Station Project Authority c/o Elbra Wedgeworth, President, c/o Bill Mosher
DUSPA Peer Design Review Committee, c/o Bill Mosher
Roger Sherman, PI Officer, DUSPA
Judy Montero, Denver District 9 Councilwoman
Angela Malpiede, RTD Director, District C
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David Cole, Chair, Lodo District
Josh Davies, President, Lower Downtown Neighborhood Association (LoDoNa)
Tamara Door, President & CEO, Downtown Denver Partnership
Kristopher Takacs, SOM
Ken Haines, Hargreaves Associates

**DENVER UNION STATION PROJECT AUTHORITY
DENVER UNION STATION PROJECT AUTHORITY
YEAR 2009-2010 RECORD OF ACHIEVEMENT**

1. FORMAL TRANSPORTATION INFRASTRUCTURE FINANCE INNOVATION ACT (TIFIA) APPLICATION FILED – 11/20/09
2. FORMAL RAILROAD REHABILITATION & IMPROVEMENT FINANCING (RRIF) APPLICATION FILED – 09/21/09
3. FULL NOTICE TO PROCEED ISSUED TO KIEWIT – April 28, 2010
4. PUBLIC INVOLVEMENT COMMITTEE FORMED
5. AUDIT COMMITTEE FORMED
6. FIRST AUDIT OF DUSPA COMPLETED
7. TIFIA LOAN CLOSING – 07/23/10
8. RRIF LOAN CLOSING – 07/23/10