



## CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)  
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)  
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)  
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

February 28, 2020

**Via Email Only – [rciandella@dtclawyers.com](mailto:rciandella@dtclawyers.com)**

Robert D. Ciandella, Esq.  
Donahue, Tucker & Ciandella, PLLC  
111 Maplewood Avenue, Suite D  
Portsmouth, NH 03801

**RE: McIntyre**

Dear Rob:

This will respond to yours dated February 25, 2020 regarding the Development Agreement between the City of Portsmouth and SoBow Square, LLC (a/k/a Redgate/Kane) concerning the McIntyre Federal Building and related matters. That letter has been reviewed by the Portsmouth City Council McIntyre Subcommittee and this response is on behalf of that Subcommittee.

The Subcommittee wishes to thank your clients for their attendance at the meeting of the Subcommittee on February 24, 2020, as well as for the letter of February 25, 2020. The Subcommittee believes that both represent positive steps towards resolution of the much-publicized current issues between the City and SoBow Square as development partners in the McIntyre Project. This is in keeping with the positive tone of recent communications between SoBow Square and the City.

Please be assured that the McIntyre Subcommittee and ultimately the full City Council will explore and analyze the economic neutrality concept contained in your letter of February 25, 2020 with an open mind. Of course, this exploration and analysis will take some time. As you have noted in your letter, it will also require discussion with the City's financial consultant David Eaton. This exploration and discussion will be expedited as much as possible, but will nonetheless take the time required for it to be performed in a responsible manner.

As the Subcommittee and the full City Council consider the concept of economic neutrality contained in your letter of February 25, 2020, they are acutely mindful of the fact that they do so under the threat of litigation seeking to recover "tens of millions of dollars" for alleged breach of contract as described in a January 30, 2020 letter addressed to Deputy City Manager Nancy Colbert Puff by Bruce Falby of the Boston law firm of DLA Piper on behalf of your client. In that matter, the City disputes the allegation of breach of contract and, if necessary, is prepared to demonstrate the numerous ways in which it continues to operate in a good-faith effort to resolve any contract issues with SoBow Square. These efforts include the creation by the City Council of the very Subcommittee on behalf of which I write this letter. The efforts also

include this expression of interest by the Subcommittee in the economic neutrality concept and a pledge to consider it in cooperation with your clients.

However, having to perform the exploration and discussion of your letter of February 25, 2020 and its presentation of the idea of economic neutrality under the duress of the threatened litigation distracts the City's efforts to reach accord with SoBow Square. Accordingly, it is the request of the Subcommittee that the notice of default presented by Attorney Falby's letter be suspended for a period of 60 days.

In return for the suspension of the notice of default, the McIntyre Subcommittee would recommend to the full City Council that the City Council vote of January 28, 2020 rejecting the form of Ground Lease contained in the Application to the National Park Service also be suspended in effect for a like period of 60 days.

The combined effect of the two foregoing actions would be to create a 60-day period in which the City and SoBow could continue to work together cooperatively and productively to examine the idea of modifying the McIntyre Project in a way which meets the needs of the citizens of the City and is consistent with your clients proposal of economic neutrality.

In addition to its representation to you that the proposal for economic neutrality in future negotiations will be seriously reviewed and considered by the City Council, the Subcommittee desires to interject into our discussions at the present time the concept of bringing a Post Office back to the McIntyre location. The citizens of the City have made it clear that to do so would be viewed as a major public benefit. Such a benefit would facilitate the resolution of any other issues existing between the City and SoBow Square. Our thinking on the exact manner in which the Post Office might be brought back to its former location is not developed in any detail, and we are hoping that SoBow Square can be of assistance in determining how that could be accomplished.

The Portsmouth City Council will be meeting on the evening of Monday, March 2, 2020. The Subcommittee will be meeting at 5:00 PM on that evening. That night the Subcommittee intends to present an update to the full City Council, describing the status of discussions between the McIntyre Subcommittee and SoBow Square. Accordingly, any response which might be provided to this letter prior to that City Council meeting would be appreciated and reported to the City Council. You may communicate with the Subcommittee through the City's Legal Department.

Sincerely,



Robert P. Sullivan  
City Attorney

cc: Karen S. Conard, City Manager  
Nancy Colbert Puff, Deputy City Manager  
City Council McIntyre Subcommittee