



OFFICE OF MULTNOMAH COUNTY ATTORNEY

JENNY M. MADKOUR
County Attorney

KATHRYN A. SHORT
Deputy County Attorney

JAMES G. RICE
Litigation Manager

501 S.E. HAWTHORNE, SUITE 500
PORTLAND, OREGON 97214

FAX 503.988.3377
503.988.3138

NICK BALDWIN-SAYRE
DAVID N. BLANKFELD
CARLOS J. CALANDRIELLO
KENNETH M. ELLIOTT
WILLIAM H. GLASSON
CINDY L. HAHN
B. ANDREW JONES
JACQUELINE S. KAMINS
DAVID A. LANDRUM
COURTNEY LORDS
BERNADETTE D. NUNLEY
CARLOS A. RASCH
JONATHAN P. STRAUHULL
KATHERINE C. THOMAS
JED R. TOMKINS
Assistants

April 9, 2018

TO: Chair Kafoury
Kim Melton – Chief of Staff

FROM: Ken Elliott, Asst. County Attorney *Ken Elliott*

RE: Wapato Jail Facility - Oregon Harbor of Hope (Homer G. Williams)
Summary of Offer to Purchase

Chair Kafoury and Kim:

In the April 2nd letter from Oregon Harbor of Hope accompanying the draft Agreement to Purchase Real Estate, the purchaser summarizes its proposal as an intent to redevelop Wapato as “a multi-service restoration campus to bring housing, training, employment and productivity to the guests of such a center.” The stated goal for the facility is to “reduce the overall costs of meeting the needs of our houseless people.” The purchaser pledges the support of the private sector to supplement the efforts already being made by local governments to shelter the homeless population.

Summary of the draft Agreement to Purchase Real Estate

Paragraph 1 - Purchase Price - \$7 million cash, to be paid on or before September 15, 2018, “after deducting from the purchase price any unknown or extraordinary costs, which may be discovered within [the] ninety (90) day inspection and due diligence period, at the sole discretion of the purchaser.” Because the purchaser’s consultants have not previously performed any feasibility studies, any and all renovation costs would be “unknown” to the purchaser prior to the inspections and could be deducted from the purchase price, at the purchaser’s sole discretion.

Paragraph 2 – Earnest Money Deposit - \$250,000, refundable to purchaser if the sale does not close, unless purchaser fails to perform.

Paragraph 3 – Purpose of the Offer – The purchaser makes the proposal “with the intention of completing a comprehensive property inspection and learning the results of a feasibility study, at the cost of the Purchaser [estimated in the cover letter to total \$200,000], to determine whether the Wapato facility can be redeveloped as a multi-service restoration facility for the houseless people in Portland and Multnomah County. Should the Purchaser’s study determine that such use is not feasible, Oregon Harbor of Hope will discontinue any further efforts to acquire or develop the site [and will obtain a full refund of the Earnest Money].”

As the draft agreement is now written, the purchaser would have the unlimited right to say, “Our feasibility study shows that redevelopment is feasible, but for a total cost of \$6.5 million, which we’ll deduct from the purchase price and proceed to close the purchase for a net of \$500,000 payable to the County.” The County has no right to cancel the deal, and the purchaser has the absolute right to deduct all renovation costs from the purchase price. That’s why I characterized the offer as “illusory.”

Paragraph 5 – Title to the Property – The County is required to convey marketable title, and the purchaser states its willingness to accept title “subject only to easements, zoning and restrictions of record.” This is standard language, but it makes little sense when viewed in the context of the purchaser’s stated purpose to redevelop Wapato for a homeless shelter and services facility. These uses are strictly prohibited by the property’s Heavy Industrial zoning, the industrial sanctuary designation in the City’s LCDC-acknowledged Comprehensive Plan, the recorded covenants and restrictions of the Rivergate Industrial Park, and the deed restrictions imposed by the Port of Portland when it sold the property to the County.

Paragraph 6 - Access to the Property – The purchaser asks for 120 business days, beginning April 17, 2018, to access the property and perform its due diligence. This is probably just a drafting error, but 120 business days (excluding weekends and holidays) would extend due diligence through October 4, 2018, almost 3 weeks after the September 15th closing deadline. By comparison, the 90 calendar days from April 17th requested for due diligence in Paragraph 1B expires on August 15th, one month before the scheduled closing.

Please call or email me with any questions. Thanks.

Cc by email: Chair Kafoury
Kim Melton
Sherry Swackhamer
Mark Campbell
Jenny Madkour