

To: A. Kurt Ardaman
From: Mark F. Ahlers
Re: City of Winter Park purchase of Post Office property

Dear Kurt,

As we discussed, I have reviewed the proposed Letter of Intent for the City's purchase of the Post Office property, the terms of which are summarized as follows:

1. Purchase Price. The City will be required to pay \$1.00 and convey an acceptable replacement property or properties ("Replacement Property") to the United State Postal Service ("USPS"). In addition, the City will be responsible to pay USPS the following:
 - a. Fair Market Value Adjustment – If the fair market value ("FMV") of the Post Office property exceeds the FMV of the Replacement Property, the City must pay USPS the difference. However, if the FMV of the Replacement Property exceeds the FMV of the Post Office Property, there is no adjustment;
 - b. Multi-Facility Adjustment – USPS prefers that the City identify a single site for the Replacement Property. However if that is not possible, and there are multiple Replacement Properties, there will be an additional adjustment to the price for the decrease in efficiency and convenience in having multiple sites. The LOI does not indicate how the amount of the adjustment will be determined;
 - c. Project Initiation Fee - Upon returning the signed LOI, the City must also provide the USPS with a non-refundable deposit of \$25,000.00 to reimburse USPS for initiating internal planning for the transaction and for coming up with the search parameters for the Replacement Property;
 - d. Project Continuation Fee – If the City identifies a Replacement Property or Properties that are acceptable to USPS, then the City must deliver another non-refundable deposit of \$25,000.00 to reimburse USPS for doing further planning, seeking approvals, due diligence and initial design work;
 - e. Cost Deposit – Upon returning the signed LOI, in addition to the Project Initiation Fee, the City also required to put \$50,000.00 in escrow as a cost deposit to reimburse USPS for the costs to comply with all operational, financial, legal and regulatory requirements. USPS may require the City to add additional funds to the escrow if the costs exceed USPS's estimate;
 - f. Site Design Costs – If USPS approves a site or sites, the City will be required to secure the right to purchase the site and, at the City's cost, hire an architect/engineering firm acceptable to USPS to:
 1. 30% Design Cost – produce design-build drawings according to USPS specs through the 30% design stage;

2. 70% Design Cost – If the 30% drawings are acceptable to USPS, then prepare plans and specs through the 70% stage;
 3. Final Design Cost – If the 70% drawing are acceptable to USPS, then prepare final design and construction plans and specs and submit them to USPS. The City is also responsible for USPS's outside consultant's design review;
- g. Cost to Construct Replacement Facility – The City is responsible for the cost of constructing the new facility on the Replacement Property. The City and the USPS will mutually agree upon which party will construct the facility. If the City handles the construction, it must comply with all requirements applicable to contractors engaged by USPS. If the USPS handles the construction, the City must place the entire amount of the estimated construction costs into escrow prior to USPS bidding for contracts.
- h. Size Adjustment - In the event the square footage of the facilities constructed on the Replacement Property exceed the square footage of the existing facility on the Post Office property, the City will be entitled to a size adjustment for the increase in construction costs because of the size difference (as reasonably determined by a USPS designated licensed architect);
- i. Equipping Replacement Facility – USPS will identify which existing equipment can be relocated and which must be replaced. The City is responsible for both the relocation and replacement costs. In addition, the City would also pay a one-time capital cost, the amount and determination of which are not specified in the LOI;
- j. Closing Costs – The City is responsible for the closing costs related to both the Post Office property and the Replacement Property including taxes, recording, title insurance, closing fees, etc.;
- k. Relocation of USPS Operations – After closing, USPS, at the City's cost, will relocate the USPS operations to the Replacement Property according to a USPS approved schedule and plan. It is not clear from the LOI how these costs will determined and calculated;
- l. Costs of Post Office Property – The LOI provides that the City is purchasing the Post Office property "As-Is" and that the City will indemnify and hold USPS harmless for any matters relating to the Post Office property. Accordingly, if there are any contamination or other issues with the Post Office property that must be remedied, the City will be responsible for the cost of the same without reimbursement from USPS;
- m. Compliance with Federal Regulations – The USPS must comply with various regulatory requirements and take into account the impact of the transaction on environmental, historical and certain other interests. However, the City will be responsible for the cost of such compliance. The LOI does not specify how these costs will be determined and calculated.

2. Procedure - Pursuant to the LOI, the transaction will proceed in the following sequence:

- a. Upon execution of the signed LOI, the City must deliver the Project Initiation Fee in the amount of \$25,000.00 to USPS along with the \$50,000.00 Cost Deposit;
- b. Thereafter, USPS will provide the City with the search parameters for the Replacement Property;
- c. The City will identify potential sites for the Replacement Property that comply with the search parameters;
- d. USPS will do preliminary site due diligence for each of the sites identified by the City;
- e. When USPS approves a potential Replacement Property site, the City must deliver the Project Continuation Fee of \$25,000.00 to USPS;
- f. Thereafter, although the LOI is not completely clear, the parties will attempt to negotiate an acceptable Purchase and Sale Agreement ("PSA") starting with a USPS form. The PSA will require the City to deliver a deposit in a mutually acceptable amount. The LOI says the deposit may be partially refunded in limited circumstances but does not indicate what the circumstances are;
- g. Upon execution of a PSA by both parties, the City will have thirty days to review the title and physical condition of the Post Office Property. If there are any issues that USPS is unwilling to cure, the City can either proceed with the transaction or terminate;
- h. Assuming the City has not terminated the PSA, the City shall hire an architect/engineer to produce design-build drawings through 30% design stage;
- i. Upon USPS approving the 30% design plans, the City's architect/engineer shall produce drawings through 70% stage;
- j. Upon USPS approving the 70% plans, the City's architect/engineer shall produce final plans and specs and provide them to USPS;
- k. USPS's outside consultant shall review the final plans and specs;
- l. Upon review and approval of the final plans and specs by USPS's outside consultant, the parties will engage a qualified appraiser to determine the FMV Adjustment;
- m. Thereafter, the City will acquire fee simple title to the Replacement Property on terms acceptable to USPS including satisfaction of USPS's title and due diligence concerns;
- n. The improvements will be constructed on the Replacement Property;
- o. Upon USPS's approval of the Replacement Property as improved, the parties will close on the City's purchase of the Post Office property and USPS's purchase of the Replacement Property;
- p. After closing, USPS will relocate its operations to the Replacement Property;
- q. After the relocation is complete, USPS will deliver possession of the Post Office property to USPS.

3. Covenant in Deed – The deed to the City may include a covenant as necessary to satisfy, in USPS's sole judgment, USPS's obligations under the National Historic Preservation Act;

4. Compliance with Federal Requirements – USPS is required to satisfy various federal regulatory requirements including National Historic Preservation Act, Environmental

Protection Act, Intergovernmental Cooperation and Relocation of Retail Postal Services. These regulations may require USPS to obtain approval from state and federal agencies which agencies could put conditions on their approval. If USPS is not satisfied with the results of these regulatory processes, USPS may terminate the PSA. The LOI does not give the City a similar right to terminate but rather requires the City to cooperate fully;

5. Party Approvals - Each party's obligation to close is contingent upon securing necessary internal approval. In the City's case, I assume this means approval of the City Commission. The LOI is not clear if approval of the LOI is sufficient or whether there must be a subsequent approval. From the City's perspective, it would probably be best if the City had the right to terminate the transaction sometime after the FMV Adjustment is determined and before construction is commenced (or before the City places money in escrow for the construction);
6. Construction of Replacement Facility - If the PSA obligates the City to complete the construction, then the PSA would set a date for completion of the construction. If the City fails to complete the construction by the prescribed date, USPS would have the option to terminate the PSA without liability to the City or any third party. In addition, the City would bear the cost of construction, change orders and of USPS's engagement of an independent architect/engineer to review conformance of the construction to USPS's requirements. In addition, the City would provide warranties satisfactory to USPS regarding the construction and property conditions.
7. Closing – If the closing does not occur by the 2nd anniversary of the PSA effective date, USPS may terminate the PSA regardless of whether the City has commenced construction and USPS will have no liability;
8. Profit Restrictions – The City is required to make representations that it is not acquiring the Post Office property to re-sell it for a profit. In addition, a restriction would be placed on the Post Office property whereby if the City sells the Post Office property prior to ten years after purchase, USPS would be entitled to a portion of the profit from the sale;
9. Termination of LOI – The LOI terminates if the City does not deliver the \$25,000.00 Project Continuation Fee and a list of proposed sites to USPS within 60 days after USPS provides the City with the search parameters. In addition, the LOI terminates if the parties have not executed a PSA within one year from execution of the LOI;
10. Binding Nature of LOI – Nothing in the LOI is binding upon the parties except for the provisions regarding the Project Initiation Fee and the Project Continuation Fee.

As we discussed, the terms of the LOI are very favorable to the USPS. Accordingly, the City may want to explore whether USPS would sell the Post Office property to the City and lease it back from the City for an agreed price and period of time. In that way, the City could eventually accomplish its goal of acquiring the property for park purposes but avoid the significant cost and risk of having to find a replacement site and construct a replacement facility.

If the only way the City can acquire the Post Office property is through the procedure set forth in the LOI, then we may want to suggest changes to the LOI including the following:

1. Termination Rights for City – Include a provision indicating that the PSA will give the City the right to terminate within 60 days after the FMV Adjustment is determined. By then, most of the big costs such as the cost of the replacement property, the estimated cost to construct the replacement facility and the FMV Adjustment should be known. At that point, the City staff could bring the matter to the City Commission for consideration;
2. Include caps on various costs – To limit the City's exposure, we may want to propose caps on certain costs that the City is responsible for paying including:
 - a. Cost Deposit – In addition to the initial cost deposit of \$50,000.00 to cover USPS's costs including costs to comply with operational, financial, legal and regulatory requirements, the City is required to add additional funds to the cost deposit. Perhaps we USPS would agree to cap it at another \$25,000.00;
 - b. Construction Cost – The LOI says that the City is responsible for all costs of the replacement property, whether the City constructs the replacement facility or USPS does. Perhaps USPS would agree to a cap this at a fixed amount. If not, perhaps fixed costs contracts could be negotiated for the construction to limit the City's exposure;
 - c. Regulatory Compliance Costs – The City is responsible for USPS's costs to comply with various regulatory matters. I assume these costs would be paid from the \$50,000.00 cost deposit. We may want to clarify that and as indicated above, place a cap on the maximum amount of the cost deposit;
 - d. Design Costs – The City is responsible for USPS's cost of outside design consultants. Again, I assume these costs will be paid from the \$50,000.00 deposit. However, we may want to clarify that and place a maximum cap on it;
 - e. Equipment Relocation and Replacement Cost and One-Time Capital Cost – same as above.
 - f. Relocation of USPS Operations Cost – same as above.
3. Multi-facility Adjustment – We may want to revise the LOI to provide how this adjustment will be determined and propose a maximum amount.

Those are my thoughts at this time. If you have any questions, please advise. Thank you.

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