

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: DECEMBER 5, 2022
TO: KAREN CONARD, CITY MANAGER
FROM: SUSAN G. MORRELL, CITY ATTORNEY
RE: UPDATE ON MCINTYRE PROJECT

Background

In April of 2022 the City and SoBow Square, LLC (SoBow) executed a Settlement Agreement that resolved a law suit brought by SoBow against the City, related to the McIntyre project. The McIntyre Federal Building is considered a Federal Monument owned by the General Services Administration (GSA). Under the Federal Monument Program, the City could purchase the 2.1 acre lot with buildings for a dollar if the National Park Service (NPS) if it approves of the costs, building, and site design, along with the preservation plan and financial plan for the project. Under the Settlement Agreement, the City and SoBow are contractually obligated to work in good faith towards a final design and financing plan for this project that is acceptable to both parties.

Community Plan

The City and SoBow have been actively designing the “Community Plan” over the last seven (7) months. In order to go forward with the Monument program, the design must be accepted by the NPS as properly preserving the National Monument in compliance with the fiduciary requirements of the program. The Community Plan reached its 50% design completion in late October and its final design in early December. Preliminary cost estimates for construction of the Community Plan vary widely. The preliminary estimates are \$74 million, \$94 million, and \$147 million (in round numbers).

Update

The Settlement Agreement signed in April requires the City and SoBow to work in good faith to submit an application to the NPS and that effort remains underway. The parties have not yet reached an agreement on a financing plan (Pro Forma) or finalized the ground lease or development agreement. All of these elements remain the subject of review and negotiation particularly in light of the preliminary construction cost

estimates. A substantial public benefit must be demonstrated in order for the City to proceed. The private benefit cannot outweigh the public benefit.

Next steps

In order to perform our due diligence and participate in meaningful negotiations, the City has requested of GSA a 3-month extension of the existing license. At the City's last check-in with the agency on November 22, this extension request was conditionally granted on the condition that NPS reaffirms its conceptual support for the current design of the Community Plan. To that end, the City will submit the current design to NPS tomorrow. The plans for that design are in the Council packet and on the City's website for the public to review. Note that this will be an incomplete submission to the NPS since the required financial documents will not be submitted with the design.

Moving ahead, the City will engage in discussions and negotiations with SoBow regarding the division of capital contributions to the project, the division of the expected revenue returns, and other pending elements of the project. The City will contract with qualified consultants to examine the estimated costs of construction, revenue projections, associated operating costs and other aspects that need further review.

Supplemental appropriation

In order to continue with this project, the City and SoBow will most likely need to modify the designs and plans to ensure that the final NPS Application is consistent with the Community Plan and financially feasible to both parties. These expenses are estimated to be up to \$50,000 per party per month. A supplemental appropriation of \$150,000 is recommended to pay for these costs. It is recommended that this appropriation be discussed at the next Council meeting on December 14, 2022.

Attachment

cc: Suzanne M. Woodland, Deputy City Manager/Deputy City Attorney