Seattle City Attorney

Peter S. Holmes

April 30, 2019

Mr. Neal Rackleff
Assistant Secretary for Community Planning and Development
U.S. Department of Housing and Urban Development
451 7th Street SW., Room 7266
Washington, DC 20410
ATTN: Linda Charest, BRAC Coordinator

Re: Lease to Archdiocesan Housing Authority at Fort Lawton

Dear Mr. Rackleff:

We have acted as counsel to the City of Seattle ("City") in connection with negotiating a proposed lease to Catholic Housing Services, dba Archdiocesan Housing Authority, a Washington not-for-profit corporation ("AHA") of certain real property ("Property") now owned by the United States Army at the facility generally known as the Fort Lawton Army Reserve Center, for which the City has made application to the United States Department of Housing and Urban Development ("HUD") for the purpose of using the Property for housing homeless persons. You requested our opinion as to whether the lease, when duly executed and delivered by the parties, would constitute a legally binding agreement.

In our capacity as counsel, we have participated in negotiations of lease terms with counsel for AHA and examined the form of lease attached to Resolution no. _______ of the Seattle City Council passed on ___________, 2019, which approved an application to HUD respecting the Property. For purposes of this opinion we have not been asked to review, and have not reviewed, the entire application.

Opinion

Based upon the foregoing and subject to the following assumptions, qualifications, and exceptions, we are of the opinion that after completing the Lease with the necessary legal descriptions and other exhibits, after effectiveness of an appropriate and duly enacted resolution of the City authorizing the Lease and the acceptance of the Property from the United States, after the conveyance of the Property to the City by the United States, and upon due execution (including initials where indicated), acknowledgment and delivery of the Lease by the Mayor or another authorized City official and by one or more authorized officers of the AHA, the Lease will be legally valid, binding, and enforceable under the laws of the State of Washington.

Assumptions, Qualifications and Limitations

This opinion is based upon and subject to the following assumptions:

(a) We assume that the copies of the Lease, including Exhibits, that we have reviewed are identical to the copies submitted to you. We assume that prior to execution the Lease will be completed with appropriate and consistent insertions, including final Exhibits as contemplated by the form of Lease and supplementation or modification of Exhibits where appropriate to conform to the Lease text. We assume other agreements or documents between the City and AHA will be consistent with the provisions of the Lease.

(b) We assume that: (i) the AHA validly exists and will remain in existence as a not-for-profit corporation under the laws of the State of Washington and that the AHA has and will have all necessary legal power and authority to execute, deliver, and perform the Lease; and (ii) before executing the Lease, the AHA will have duly authorized its execution and delivery by the officers(s) of the AHA who execute the Lease, which authorization will remain in full force and effect. We further assume that the United Indians of All Tribes Foundation will be in existence as a not-for-profit corporation under the laws of the State of Washington with full capacity to enter into the agreement as contemplated by the Lease, and that the governing bodies of that corporation will duly authorize the agreement between AHA and such corporation required by the Lease. We assume that neither AHA nor United Indians of All Tribes Foundation will be subject to any disqualification from participation in any transaction involving the grant or use of public funds or property, whether by reason of any activities, purposes, or policies of such organization or otherwise.

(c) We assume that: (i) before executing the Lease by the City, the City will have complied with all applicable requirements under the Washington State Environmental Policy Act (“SEPA”) and regulations and that no relevant determination or environmental document will still be subject to appeal or will have been ruled invalid or inadequate, or ordered to be withdrawn or modified, by any hearing examiner, administrative body, or court; (ii) that, prior to executing the Lease by the City, the City Council will have duly adopted amendments to zoning regulations for the Property, which will have taken effect and will permit the uses and improvements contemplated by the Lease, consistent with the City’s then effective Comprehensive Plan, as amended; and (iii) that no order, judgment or decree of any court or administrative body of competent jurisdiction will enjoin, invalidate, stay, or otherwise impair the effectiveness of the amendments.

(d) We assume that, in connection with all City actions described above, all required notices, publications, and hearings have been and will be duly and timely made and conducted in accordance with applicable law.

(e) We assume that the legal description of the parcel(s) in the final Exhibit D to the Lease will be complete, accurate, and adequate, and consistent with the deed conveying the Property from the United States to the City.

(f) We assume that, prior to executing the Lease, the parcel described in the final Exhibit D to the Lease will have been legally divided from the remainder of the Fort Lawton Property (as defined in the Lease) by the United States in a transaction exempt from Washington State and City subdivision laws, or will have been so divided in accordance with such laws, and that such parcel will satisfy the applicable legal requirements for the establishment and construction thereon of the improvements and uses contemplated by the Lease.

(g) The Lease presumes the conveyance of the Property to the City by the United States will have occurred. We assume that the terms of conveyance from the United States and any encumbrances to which the Property is subject will not contain any provisions that would conflict with the Lease or render any provisions of the Lease invalid or unenforceable.

(h) We assume that the final terms of the City's Application (as defined in the Lease), as approved by HUD, will not contain any provisions that would, as a result of the references to the Application in the Lease, render any provisions of the Lease invalid or unenforceable.

In addition, this opinion is subject to the following qualifications, and limitations:

(a) The enforceability of the Lease may be subject to the effect of: (i) applicable state or federal bankruptcy, insolvency, conservatorship, receivership, seizure, liquidation, reorganization, moratorium, or similar laws, now or hereafter in effect, affecting the rights of lessors, lessees, contracting parties, or owners of interests in property generally; (ii) state and local laws protecting the rights of residential tenants who may occupy housing at the Property; (iii) insurance laws or regulations, to the extent they may affect the enforceability of provisions relating to insurance, casualty, indemnification, liabilities, releases, and waivers of claims or immunities; (iv) environmental laws or regulations, to the extent they may affect the enforceability of provisions relating to liabilities or obligations relating to hazardous or toxic substances; (v) defenses that could arise based on a lessor's breach a covenant of quiet enjoyment, or constructive eviction; (vi) rules of law and principles of equity: (A) relating to concepts of unconscionability, mistake, fraud, or misrepresentation, impracticability, or impossibility, frustration, laches, good faith and fair dealing, materiality, forfeiture, and mitigation; (B) relating to the availability of specific performance, injunctive relief, and other equitable remedies (regardless of whether considered in a proceeding in equity or at law), or limiting the availability of a remedy where another remedy has been elected; (C) limiting the effect of provisions requiring that any modifications or waivers be in writing and signed by the parties; (D) limiting the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification of a party for, liability for its own action or inaction, to the extent that the action or inaction involves negligence, recklessness, willful misconduct, or unlawful

conduct; (E) permitting under some circumstances a party who has materially failed to render or offer performance required by a contract to cure that failure, notwithstanding the expiration of a period stated in the contract; or (F) limiting the enforceability of provisions to the extent they purport to survive the expiration or termination of the Lease; and (vii) the discretion of the court before which proceedings may be brought.

(b) We express no opinion as to the title to, or any encumbrances or restrictions on, or the condition of, any property.

(c) Under the Washington context rule of interpretation of contracts, even though terms of a contract may be unambiguous, courts may admit extrinsic evidence of the circumstances surrounding the transaction to ascertain the intent of the parties to aid the court in interpreting the language of the contract.

(d) The opinion of this office is limited to the laws of the State of Washington and the City of Seattle and we express no opinion on the law of any other jurisdiction.

This opinion is solely for the benefit of the addressee and may not be relied upon by any other person or entity. This opinion is limited to the matters stated herein and no opinion is implied or may be inferred beyond the matters expressly stated. The opinions contained in this letter are given as of the date hereof and we undertake no responsibility to advise you of changes in laws, interpretations of laws or facts that may hereafter come to our attention.

Very truly yours,

PETER S. HOLMES
Seattle City Attorney
[TO BE SIGNED AFTER HUD REVIEW]

B y

PATRICK DOWNS
Assistant City Attorney

cc: Steve Walker, Director, Office of Housing