



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 17, 2012

Ordinance 17412

Proposed No. 2012-0228.2

Sponsors McDermott, Hague and Gossett

1 AN ORDINANCE relating to the construction of the
2 Technology Access Foundation's Community Center for
3 21st Century Skills at Lakewood Park in accordance with
4 the use agreement authorized by Ordinance 15450 and
5 amended by Ordinance 17093, authorizing the King County
6 executive to further amend the use agreement in order to
7 meet the requirements of the federal New Market Tax
8 Credit program.

9 **STATEMENT OF FACTS:**

- 10 1. In 2006, in accordance with Ordinance 15450, King County and the
11 Technology Access Foundation ("TAF"), a Washington nonprofit
12 corporation, entered into a thirty-year use agreement for the development
13 of a new community learning center ("the center") at Lakewood Park.
- 14 2. In 2011, as authorized by Ordinance 17093, King County and TAF
15 amended the use agreement to modify the payment schedule, to extend the
16 term of the use agreement to fifty years, and to execute certain stormwater-
17 related covenants affecting county parks property adjoining the center site.

18 3. As anticipated in Ordinance 17093, TAF is financing a portion of the
19 cost to construct the center through the federal New Markets Tax Credit
20 ("NMTC") program.

21 4. In furtherance of the NMTC financing anticipated in Ordinance 17093,
22 TAF entered into a set of contracts with a separate Washington not-for-
23 profit corporation known as TAF 2020. TAF 2020 is a special-purpose
24 entity that shares leadership with TAF, has a primary mission to support
25 TAF, and is authorized only to enter into NMTC financing-related
26 contracts with TAF and to perform certain other duties and obligations in
27 support of the NMTC financing for and construction of the center.

28 5. The NMTC financing-related contracts with TAF 2020 will allow TAF
29 to construct and occupy the center in order to provide programming to the
30 community, all as contemplated in the use agreement, and Ordinances
31 15450 and 17093.

32 6. The proposed second amendment to the use agreement will allow TAF
33 and TAF 2020 to implement the NMTC financing anticipated in
34 Ordinance 17093 and to meet the requirements of the federal NMTC
35 program.

36 7. Construction of the center is nearly complete and the building will be
37 opened in Fall 2012. All common spaces will be completed and TAF
38 anticipates receiving a Certificate of Occupancy no later than September
39 30, 2012. Any furnishings, fixtures, or equipment not completed by

40 September 30, 2012, are not needed for currently planned programming of
41 the center.

42 8. The parks and recreation division of the department of natural resources
43 and parks has determined that the proposed second amendment to the use
44 agreement will not negatively impact park purposes or activities and
45 supports the proposed second amendment to the use agreement. This
46 legislation brings together government, business, nonprofit organizations
47 and community groups in promoting healthy, vibrant and safe
48 communities.

49 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

50 SECTION 1. The King County executive is hereby authorized to execute a
51 second amendment to the use agreement with the Technology Access Foundation,
52 substantially in the form of Attachment A to this ordinance. The executive is further
53 authorized to execute such other documents that are necessary or convenient to carry out
54 the purposes of this ordinance.

55 SECTION 2. If, for any reason, the Technology Access Foundation ceases to
56 operate the community center at Lakewood Park before the initial term of the use
57 agreement expires, then the director of the parks and recreation division in the department
58 of natural resources and parks shall promptly provide written notice of such cessation to

59 the chair of the transportation, economy and environment committee and also to the King
60 County council member representing that area.

61


Ordinance 17412 was introduced on 7/9/2012 and passed by the Metropolitan King
County Council on 9/17/2012, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.
McDermott
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Gossett, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 28 day of SEPTEMBER 2012.


Dow Constantine, County Executive

RECEIVED
2012 SEP 28 PM 3:23
KING COUNTY COUNCIL
CLERK

Attachments: A. Second Amendment to Use Agreement

SECOND AMENDMENT TO USE AGREEMENT

THIS SECOND AMENDMENT TO USE AGREEMENT ("Amendment") is made by and among King County, Washington, a county and political subdivision duly organized and existing under the laws of the State of Washington, through the Parks and Recreation Division of its Department of Natural Resources (the "County"), and TAF2020, a Washington nonprofit corporation ("TAF2020") in its capacity as assignee of and successor in interest to Technology Access Foundation, a Washington nonprofit corporation ("TAF").

RECITALS

-
- A. As authorized by King County Ordinance 15450, the County and TAF entered into a Use Agreement dated as of August 27, 2006, for the design, construction, use, development, programming, and supplemental maintenance of a new community center (the "Center") on a portion of land (the "Site") at Lakewood Park (the "Park") (the "Use Agreement"); and
 - B. In 2011, the County agreed to amend the Use Agreement to facilitate TAF's construction of the Center on the Site, which amendment was authorized by King County Ordinance No. 17093.
 - C. As stated in Ordinance No. 17093, the construction of the Center is being financed through the Federal New Markets Tax Credit (NMTC) program available pursuant to Section 45D of the Internal Revenue Code of 1986, as amended (the "NMTC Financing") and other loans.
 - D. To further the NMTC Financing contemplated in Ordinance 17093, a new entity, TAF2020, was created. TAF and TAF 2020 have shared leadership and TAF2020 has a primary mission of supporting TAF. TAF2020 is a special purpose entity, authorized only to enter into the Assumption Agreement (as defined below), construct certain improvements on the Site, sub-assign its interest in the Use Agreement to TAF, and perform certain other duties and obligations ancillary thereto and in connection with the NMTC Financing.
 - E. Also in furtherance of the NMTC financing, and with the County's consent, TAF assigned its interest and obligations in the Use Agreement to TAF2020 under that certain Assignment and Assumption of Use Agreement, dated the 28th day of December, 2011, ("Assumption Agreement"); and TAF2020 sub-assigned its interest and obligations in the Use Agreement back to TAF under that certain Sub Use Agreement, dated the 28th day of December, 2011 ("Sub-Use Agreement");
 - F. As a result of the Sub-Use Agreement, TAF will occupy the Center and provide programming to the community, all as contemplated in the Use Agreement and Ordinances 15450 and 17093.

- G. TAF and TAF2020 have requested certain further amendments to the Use Agreement in order to better meet the requirements of the Federal NMTC program and other lenders, and the County desires to amend the Use Agreement for those purposes as set forth in this Amendment.

NOW THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County and TAF2020 hereby agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Definitions and Capitalized Terms.

- A. TAF2020 and the County agree that the recitals set forth are correct and are incorporated herein. All capitalized terms used and not otherwise defined in this Amendment, but defined in the Use Agreement, shall have the meaning set forth in the Use Agreement.
- B. Consistent with the Assumption Agreement, all references to "TAF" in *Section 2* of this Amendment, and in the body of the Use Agreement, are understood and acknowledged to mean "TAF2020" as assignee of the Use Agreement.

2. Amendments to Use Agreement

- A. *Section 2.6* of the Use Agreement is hereby amended to read as follows:
- 2.6 The County will provide a total of \$2 million dollars towards the capital cost to construct the Center at the Site to be spent as TAF deems appropriate, consistent with the terms and conditions set forth in this Agreement, and as set forth in Attachment C. TAF will be solely responsible to secure and to provide all other funding needed to design, construct, maintain, operate and repair the Center and the Site during the Term (as defined below) of this Agreement. The County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Center in excess of the two million dollar (\$2,000,000) capital grant outlined above. TAF will, upon request, inform any inquiring person or entity that the County has no further financial obligations associated with the construction, maintenance, repairs or subsequent improvements to the Site or the Center.
- 2.6.1 In the unlikely and undesirable event that TAF is unwilling or unable to complete construction of the Center on the Site as required under the Use Agreement, then the County agrees that it will provide the foregoing capital grant to a Qualified Successor or Assign of TAF subject to and conditioned on such Qualified Successor or Assign completing the Center in accordance with and subject to the terms of this Agreement.

2.6.2 For purposes of this **Section 2.6**, the term "Qualified Successor or Assign of TAF" means a not-for-profit, 501(c)(3) tax-exempt organization which:

- (i) is a chamber of commerce, a service organization, a community, youth, or athletic association, or other similar association located and providing service in the immediate neighborhood, and which is ready, willing, and able to complete construction of the Center on the Site; and
- (ii) which is identified, selected, authorized, or nominated to serve as TAF's successor or assign by the lender or creditor that has financed the largest portion of the Center construction costs on behalf of TAF; and
- (iii) which King County has approved as successor or assign to TAF, such approval not to be unreasonably withheld after due diligence and reasonable inquiry.

B. **Section 4.0** of the Use Agreement is hereby amended in its entirety to read as follows:

4.0 **USE OF PREMISES.** The Premises may be used for the operation of the Center to provide youth and family enrichment programs to the public (or similar programs consistent with the use and operation of the Center by a nonprofit, 501 (c) (3) tax-exempt entity) and to house TAF programs and administration. For-profit commercial or industrial uses are prohibited.

C. **Section 5.1** of the Use Agreement is amended as follows:

5.1.3 **NOTICE OF AND TO TAF LENDERS.** TAF shall notify the County of the existence and identity of any lender to TAF (each an "Identified Lender") and shall provide the County with a copy of all recorded instruments relating to each such loan, together with the promissory note and all loan agreements secured thereby. The County shall, promptly upon receipt of a communication purporting to constitute the foregoing notice, acknowledge in writing receipt of such communication as constituting the notice provided for by this **Section 5.1.3**; or, in the alternative, the County shall notify TAF and the Identified Lender that the County rejects such communication as not conforming with the provisions of this **Section 5.1.3**, and shall specify the basis of such rejection. If TAF or TAF's successors or assigns notify the County of one or more Identified Lenders in compliance with the provisions of this **Section 5.1.3**, and if the County thereafter notifies TAF or its successors or assigns of: (i) default under this Agreement; or (ii) a termination of this Agreement; or (iii) a matter on which the County may predicate or claim a default under this Agreement, then the County shall at the same time provide a copy of such notice to each such Identified Lender.

D. *Section 5.24* of the Use Agreement is amended as follows:

5.24.4 OTHER TAF TERMINATION. INTENTIONALLY DELETED

5.24.8 IDENTIFIED LENDER OPPORTUNITY TO CURE DEFAULT. Upon receipt of the notice required to be given to an Identified Lender under *Section 5.1.3* such Identified Lender shall have 90 days after the expiration of TAF's cure period, to remedy, commence remedying, or cause to be remedied the defaults specified in any such notice; provided that in the event that any such default cannot, with reasonable diligence, be cured within 90 days, the Identified Lender shall have such longer period as may be reasonably required to complete such cure including, without limitation, such time as may be required for the Identified Lender to gain possession of TAF's interest under the Use Agreement, provided that Identified Lender notifies the County within 90 days of the expiration of TAF2020's cure period of its intention to cure such default and Identified Lender promptly commences and diligently pursues such cure to completion. The County shall accept such performance by or at the instigation of such Identified Lender as if the same had been done by TAF.

5.24.9 NEW USE AGREEMENT. The County hereby agrees that in the event the Use Agreement is terminated for any reason, including, without limitation, as a result of a rejection of the Use Agreement in a bankruptcy proceeding, upon Identified Lender's request made within ten (10) days after the County has provided Identified Lender with written notice that the Use Agreement has terminated, the County and Identified Lender shall within thirty (30) days after Identified Lender's notice enter into a new Use Agreement and such new Use Agreement shall be upon the same terms and conditions, and for the unexpired term, of the Use Agreement immediately prior to such termination; provided, however, the County shall not be obligated to enter into any such new Use Agreement with Identified Lender unless:

- (1) Identified Lender has cured all curable defaults of TAF (such as, for example, payment of rent and other charges and monetary obligations) that existed under the Use Agreement as of the date of termination, or with respect to such curable defaults as reasonably require Identified Lender to be in possession of the Site in order to effect such cure (such as, for example, repair to improvements) Identified Lender expressly agrees in the new Use Agreement to promptly commence and diligently pursue completion of the cure of such defaults;
- (2) Identified Lender pays the County rent and other charges that would have accrued under the Use Agreement from the date of termination to the date the new Use Agreement is mutually executed; and

- (3) If TAF (or anyone in possession by, through or under TAF) remains in possession of the Site, Identified Lender expressly agrees in the new Use Agreement that:
- (i) the County shall have no responsibility with regard to removing TAF or such persons from the Site (other than cooperating in good faith with Identified Lender's eviction efforts, at no cost to the County) or for cleaning up or repairing the Site with regard to matters that were caused by or the responsibility of TAF, and
 - (ii) Identified Lender accepts the Site in its then current condition with respect to such matters and assumes the responsibility for and agrees to bear all costs associated with evicting Assignee and such other persons from the Site, without abatement of rent or other charges due from Identified Lender, as assignee, under the new Use Agreement.

Notwithstanding any other portion of this **Subsection 5.24.9**, the parties acknowledge that under King County Code Section 4.56.190, any new Use Agreement with a term of more than five (5) years will require the approval of the King County Council by ordinance.

- E. **Section 5.30** of the Use Agreement is hereby amended to add the following provision at the end of that section:

The County shall give each Identified Lender prompt notice of any litigation, arbitration, or legal proceedings between the County and TAF involving any right or obligation under this Agreement. Each Identified Lender shall have the right to intervene in any such litigation, arbitration, mediation or proceedings and be made a party to such litigation, arbitration, mediation or proceedings, and the parties do hereby consent to such intervention.

- F. Attachment A to the Use Agreement is hereby replaced with Exhibit A to this Amendment.

3. **General Provisions**

- 3.1 All Other Use Agreement Terms in Effect. Except to the extent the Use Agreement is modified by this Amendment, all other terms and conditions of the Use Agreement will continue in full force and effect. In the event of a conflict between the terms of the Use Agreement and the terms of this Amendment, the terms of this Amendment shall prevail.
- 3.2 Entire Agreement. This Amendment represents the entire agreement of the County and TAF2020 with respect to the subject matter hereof, and the terms hereof shall not be amended or changed by any oral representation or

agreement. To be effective, any amendments to the Use Agreement shall be in writing and shall be executed by both parties hereto.

- 3.3 Authority. Each signatory of this Amendment represents that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.
- 3.4. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Amendment may be detached from any counterpart of this Amendment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Amendment identical in form hereto but having attached to it one or more additional signature pages.
- 3.5 Effective Date. This Amendment shall be effective on the date that it is fully executed by TAF2020 and the County. This Amendment is fully executed when each party has signed and dated their signature, and their signature has been duly acknowledged by a notary public.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

(Signature of Notary)

(Print or stamp name of Notary)

NOTARY PUBLIC in and for the

State of Washington, residing at _____.

My appointment expires: _____.

Exhibit A

**Legal Description of the Site for the TAF 21st Century Community Center at
Lakewood Park**

SURVEYOR'S LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF S.W. 108TH STREET, AS ESTABLISHED IN INSTRUMENT RECORDED UNDER RECORDING NUMBER 5336589 AND THE MOST NORTHWESTERLY CORNER OF THE PLAT OF SEOLA GARDENS DIVISION 1, A MASTER PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 256 OF PLATS, PAGES 10 THROUGH 23 INCLUSIVE;

THENCE SOUTH 00°18'31" EAST ALONG THE WESTERLY LINE OF SAID PLAT, A DISTANCE OF 1029.19 FEET, MORE OR LESS, TO THE NORTHWESTERLY BOUNDARY LINE OF SAID PLAT OF SEOLA GARDENS DIV. 1;

THENCE SOUTH 82°10'49" WEST ALONG THE BOUNDARY LINE OF SAID PLAT, AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 321.10 FEET TO THE SOUTHERLY EXTENSION OF THE EAST LINE OF THE WEST 61 FEET OF THE EAST 335 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 00°52'55" WEST ALONG SAID EAST LINE, A DISTANCE OF 771.94 FEET TO THE SOUTH LINE OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 89°45'29" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 122.01 FEET TO THE EAST LINE OF THE WEST 60 FEET OF THE EAST 212 FEET OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE NORTH 00°52'55" WEST ALONG SAID EAST LINE, A DISTANCE OF 299.78 FEET TO SAID SOUTH MARGIN OF S.W. 108TH STREET;

THENCE NORTH 89°47'29" EAST ALONG SAID SOUTH MARGIN, A DISTANCE 207.26 FEET TO THE POINT OF BEGINNING;

SITUATE IN KING COUNTY, WASHINGTON.