## STAFF REPORT

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| **Agenda Item:** | 8 | **Name:** | Mike Reed |
| **Proposed No.:** | 2019-0396 | **Date:** | November 12, 2019 |

**SUBJECT**

Lease agreement with International Gateway East for lease of telecommunications rack space in the Sabey Intergate Exchange Building #2 in south Seattle.

**SUMMARY**

King County manages telecommunications equipment that provides redundancy for telecommunications services utilized by the County and KCIT leases space in the Sabey Intergate Exchange Building #2 (3311 S. 120th Place) in south Seattle to house the required equipment. The lease has expired, and the parties have negotiated a proposed new lease agreement. The proposed ordinance would authorize the Executive to execute the proposed lease agreement.

**BACKGROUND**

King County Information Technology Services manages telecommunications equipment that provides redundant fiber internet connection for King County in the Sabey Intergate Exchange Building #2 in south Seattle; this connection is subordinate to the County’s fiber connection at the Westin Building in downtown Seattle. The County leases network rack space to house the telecommunications equipment in Building #2, which is accessible to the County’s primary data center in Building #5 within the Sabey property. The landlord is International Gateway East, LLC; the governing entity for this LLC is Sabey Properties, LLC.

The lease for this rack space expired in 2013. The lease contained “holdover” penalties that would have subjected the County to increased rent for continued use of the space; however, the landlord, International Gateway East, LLC, opted to suspend holdover penalties while working with the County to establish a new lease agreement.

The Executive notes that the communications facilities supported by this lease are critical to county telecommunications services. In response to a staff inquiry, the Executive stated that:

“Building #2 is King County’s redundant Point of Presence that is critical to providing connectivity to the Sabey Data Center and to Internet providers. Without this location, the Sabey Data Center would not have connectivity to the King County Network. In addition, all internet connections would be provided by a single location, eliminating redundancy and continuity of service in the event of a service disruption at the Westin Building.”

The County and International Gateway East, LLC have negotiated a new lease agreement that provides for continued use of the rack space at the facility (Attachment A: Lease Agreement). The lease would expire on January 31, 2027, with two 2-year extension options. Initial monthly rental is $4,700 per month, increasing at 2.5% annually.

Key provisions of the proposed agreement are as follows:

* **Building location:** 3311 S. 120th Place, Seattle, Washington 98168
* **Space lease:** County agrees to lease space sufficient for three telecommunications racks in the Building’s NODE room, as well as access to the “minimum point of entry” within the premises. Also granted is the right to install, maintain, and operate the equipment, appurtenances and related equipment. Installation of any equipment is to be without cost to the landlord, except as provided in the lease.
* **Term:** The lease will begin on the Commencement Date—the first day of the month after the tenant executes the lease. The lease will expire on January 31, 2027. The County has the right to extend the lease for two additional terms of two years each, on the same terms and conditions as provided in the lease agreement.
* **Holdover:** Any holdover after the lease term is considered a month-to-month tenancy; if the County holds over after termination with the Landlord’s prior written consent, the rent is invoiced at the last monthly rental rate for sixty days, and thereafter at 125% of total monthly rent. If the County holds over without prior written consent, rent is to be invoiced at 150% of total monthly rent, and County is subject to indemnification and hold harmless provision against loss and liability, including any claim made by any succeeding tenant, resulting from failure to surrender or vacate, including attorney’s fees.
* **Landlord Cancellation Option:** If the Landlord has executed the lease, but the County has not executed the lease by December 31, 2019, the Landlord has the option to cancel the lease, rendering the lease void and of no further force and effect.
* **Rent:** $4,700 per month, to be increased by 2.5% on the anniversary of the Commencement Date and annually thereafter for the duration of the term and any renewal terms. County is to pay any federal, state or local taxes attributed to use of the premises. Late rent incurs interest at a rate of 18% annually prorated on a daily basis, plus a late charge of 3% of total rent due.
* **Improvements and Alterations:** County is not to make any changes, alterations, additions or improvements without first obtaining written consent of the Landlord, which shall not be unreasonably withheld, except that the County may, from time to time, replace or upgrade the Data System equipment without having to obtain the Landlord’s consent, if it can be operated within Building capacities and limitations provided for in the lease.
* **County Covenants:** County covenants to keep the premises in good order and condition throughout the term of the lease, to promptly report any damage to the premises, to pay the landlord for the cost of repairs for damage caused by County’s negligence or misconduct. County is required to maintain commercial general liability insurance and provide the Landlord with a Certificate of Insurance.
* **Landlord Covenants:** Landlord covenants to maintain and repair the building, and that landlord will comply with all applicable laws and regulations.

In addition to the above, the lease includes provisions for maintenance, interference, default, labor, provision of services, termination, insurance, assignment, utilities, compliance with laws, governing law, entire agreement, counterparts, amendments, notices, hazardous materials, relocation or termination, and miscellaneous provision.

**ANALYSIS**

Proposed Ordinance 2019-0396 was transmitted to Council pursuant to King County Code 4A.100.070 and the proposed ordinance would authorize the Executive to execute the lease agreement.

***Alternative Analysis***

The proposed lease agreement supports critical county telecommunications services in a location that provides access to the County’s data center at the Sabey Center in south Seattle. In describing the Lease Alternatives Analysis for this agreement, the Executive indicates that the existing leased site is a long term King County fiber infrastructure location, and that relocation of the leased space would potentially require changing KCIT Internet Service Provider contracts and substantial capital investment. The existing lease expired several years ago; the Executive indicates that a personnel shortage in the Leasing unit of the Facilities Management Division resulted in the delay in completing the lease agreement. The landlord has demonstrated flexibility with the County in opting not to trigger “holdover” penalties that would otherwise be due. It appears that this facility provides a needed service to the County in providing redundancy for critical telecommunications functions.

***Legal Review***

Legal review has been completed on this proposed agreement. Legal counsel noted that the lease includes language regarding utilities which may be inconsistent, that could be revised through an amendment; but that an accepted legal maxim privileging specific language over general in the instance of a conflict would address this concern, so amending the measure would be an option. Otherwise, counsel indicates that the language of the agreement appears workable.

***Fiscal Analysis***

Table 1 below estimates the financial impacts of the proposed lease for the 2019-2020 biennium and future biennia. As indicated in the fiscal note, the cost of the proposed lease has been included in the 2019-2020 Biennial Adopted Budget, so no corresponding appropriation request was transmitted with this proposed ordinance.

**Table 1. Fiscal Impacts of Proposed Ordinance 2019-0396**

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| **2019-2020** | **2021-2022** | **2023-2024** |
| $80,488[[1]](#footnote-1) | $118,284 | $97,684 |

***Timing***

Of particular note is the Landlord Cancellation Option, above; if the County doesn’t execute the lease by December 31, 2019, the landlord can cancel the agreement. Committee action at today’s meeting (November 12th) with Council action on November 20th, would allow for execution of the agreement by the County by the required date.

**INVITED**

* Anthony Wright, Director, Facilities Management Division

**ATTACHMENTS**

1. Proposed Ordinance/Motion 2019-0396 (and its attachments)
	1. Attachment A: Communications Infrastructure Lease Agreement
2. Transmittal Letter
3. Fiscal Note
4. Lease Property Summary
1. Based on a start date of August 1, 2019. [↑](#footnote-ref-1)