



Legislation Text

File #: 2012-0214, **Version:** 2

Clerk 07/09/2012

AN ORDINANCE relating to transit oriented development of a portion of the county-owned park-and-ride lot located partially in Kirkland and partially in Bellevue, approving two ground leases of the site to Kirkland Park & Ride, LLC, and two project leases from Kirkland Park & Ride, LLC, back to the county of a new transit facility and a commuter parking garage to be constructed on the site; conveying a surplus portion of the site to Kirkland Park & Ride, LLC, and authorizing the county executive to execute final forms of the ground leases and project leases, and approving certain other provisions of the lease, lease-back transaction; and declaring an emergency.

PREAMBLE:

By its request for proposals issued in August 2011, the county has sought to promote transit oriented development on a portion of a site located in both Bellevue and Kirkland currently used as a Metro park-and-ride surface lot. The site is comprised of a single lot, bisected by the cities of Bellevue and Kirkland, and shall be subdivided into three legal lots for purposes of development as provided herein. In accordance with the request for proposals, the county accepted the proposal of Polygon Northwest, LLC and Imagine Housing, LLC ("Kirkland Park & Ride, LLC") to construct a new transit center and expand the park-and-ride facility by building a parking garage. The county would then lease back both the new transit center and the

parking garage facility upon completion pursuant to two project leases, each providing the county an option to purchase the Lease Agreement (With Option to Purchase - Transit Center) and the Lease Agreement (With Option to Purchase - Parking Garage) ("the project leases"). Both project leases would commit the county to make monthly rent payments over a long-term lease commencing upon satisfactory completion of the transit center and parking garage. The county has grant agreements with the Federal Transit Administration and Washington state Department of Transportation to provide reimbursement for the design and construction costs of the transit center and parking garage, including internal county staff time and legal costs totaling \$7,125,000.00. The county is also including a grant match of \$205,000 from the transit capital account and the value of the surplus portion of the site itself, currently appraised at \$10,000,000.00, which shall be conveyed to Kirkland Park & Ride, LLC as partial payment of the purchase option price should the county elect to exercise its option to purchase the parking garage.

To permit timely completion of the new transit center and parking garage projects as set forth in the county's request for proposals, the county wishes to enter into separate lease, lease-back transactions for the acquisition of the new transit center and the parking garage, as authorized by RCW 36.34.205 and K.C.C. 4.56.160, which incorporate by reference RCW 35.42.070 through 35.42.080 ("the Municipal Leasing Act"). The county will ground lease two legal lots ("the ground leases") to Kirkland Park & Ride, LLC, who will construct the new transit center and parking garage on the respective lots in two discrete phases, both to be built in accordance with design criteria agreed to by the county, and lease each back to the county with an option to purchase. In accordance with the Municipal Leasing Act, the county may make no rent payments to Kirkland Park & Ride, LLC under the project leases until each has been completed to the county's satisfaction and is ready for occupancy. After completion of the new transit

center and parking garage, the county may, at its option, use money provided by Washington state Department of Transportation, Federal Transit Administration funds and its own funds, plus the current fair market value of the remaining unused lot of the real property and appurtenant easements ("the housing property"), exercise its option to purchase and thereby prepay the rent due under the project leases and acquire fee title to the new transit center and parking garage. The housing property will be conveyed to Kirkland Park & Ride, LLC for the current appraised fair market value of \$10,000,000.00 subject to housing covenants to be recorded upon conveyance, and shall thereafter be used for development of both affordable and market rate housing and other related mixed uses. Terms of the ground leases and project leases have been negotiated, and the county wishes to approve of same.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. The county hereby finds that the public interest, welfare and benefit require the county to lease, with an option to purchase, a new transit center and lease, with an option to purchase, a parking garage to provide better transit facilities and to provide expanded park-and-ride facilities, which facilities shall be constructed on part of the South Kirkland Park-and-Ride owned by the county and located at 10610 Northeast 38th Place, Kirkland, WA 98033 in the cities of Bellevue and Kirkland.

B. The county further finds that a lease, lease-back transaction, as authorized by the Municipal Leasing Act, would be consistent with the county's request for proposals to develop the site, facilitate transit oriented development of the site consistent with the planning expectations of the cities of Kirkland and Bellevue, and shift the risk of construction cost liability to Kirkland Park & Ride, LLC.

C. The county further finds that the proposal is the most efficient proposal for achieving the county's policies. Unless otherwise defined in this ordinance, capitalized terms used in this ordinance have the meanings given such terms in the two attached project leases.

D. The county further finds that the monthly rent payable under the project leases in the amount of \$3,417.00 per month for the transit center and \$51,500.00 per month for the parking garage do not exceed prevailing rental rates for comparable space.

E. The county further finds that funds expected to be available to the county from the Federal Transit Administration, Washington state Department of Transportation, and its own sources will be sufficient to allow the county to exercise its options to purchase and prepay the rent payable under the project leases and acquire fee title to the new transit center and parking garage.

F. The county further finds that federal tax credits valued at approximately \$10 million will comprise a majority of the financing for the affordable housing component of this project; the tax credits will require a certificate of occupancy for the affordable housing no later than December 31, 2014 or they will expire. The three phase project construction schedule relies on a July 2012 construction start date for the first phase of the project to accomplish timely completion of the second phase, allowing commencement of the third project phase including the affordable housing project. If the project is not commenced immediately, there is a substantial risk that the affordable housing tax credits will expire and make completion of the project infeasible.

G. Enactment of this ordinance as an emergency is necessary to authorize the executive to immediately execute the leases and easement agreements to allow for prompt commencement of construction consistent with project schedule requirements.

SECTION 2. Surplus declaration. The county executive is declaring a portion of the South Kirkland Park-and-Ride Lot ("the housing property") surplus to the county's needs. Kirkland Park & Ride, LLC will provide Metro Transit with a new transit center and a five-hundred-thirty-two-stall park-and-ride garage adjacent to the surplus portion and make improvements to the surface lot with a net increase in total parking spaces of two hundred fifty-three, bringing the total number of parking spaces to eight hundred fifty-three. In consideration for the purchase of the transit center, the county intends to use cash from the previously identified sources. In consideration for the purchase of the parking garage, the county intends to use a combination of

cash and conveyance to Kirkland Park & Ride, LLC, of the housing property. The current fair market value of the housing property, combined with the aforementioned cash sources, shall not exceed the option price due under the Lease Agreement (With Option to Purchase - Parking Garage) at the time of conveyance.

SECTION 3. Approval of ground leases and project leases. The county executive is authorized to sign the ground leases, the project leases and related easement agreements in substantially the form set forth as Attachments A through D to this ordinance, respectively; provided, however, that:

A. The term of the ground leases shall commence no earlier than the effective date of this ordinance and shall expire no later than twenty-five years thereafter; and

B. The term of the project leases shall commence no earlier than the effective date of this ordinance and shall expire commensurate with the ground leases, and the amount of Monthly Rent payable under the Lease Agreement (With Option to Purchase - Transit Center) shall not exceed the monthly rate of \$3,417.00 nor shall the amount of Monthly Rent payable under the Lease Agreement (With Option to Purchase - Parking Garage) exceed the monthly rate of \$51,500.00. When fully executed, copies of the Ground Leases and Project Leases shall be filed with the clerk of the council.

SECTION 4. Pledge of taxation and credit. The county's obligation to pay rent under the Project Leases will be a limited tax general obligation of the county. The county hereby irrevocably covenants and agrees that it will include in its annual budget and levy taxes annually on all taxable property within the county, within and as part of the tax levy permitted to the county without a vote of the electors, in amounts sufficient, together with all other money legally available and to be used therefore, to pay the monthly rent and any additional rents due under the project leases as the same shall become due. The full faith, credit and resources of the county are irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such amounts.

SECTION 5. Disposal of surplus real property. The county executive is hereby authorized to convey the fee simple interest in the housing land as provided in the Lease Agreement (With Option to Purchase -

Parking Garage) as consideration for a portion of the option price of the parking garage as provided therein, after all parties have executed the Housing Covenant and Regulatory Agreement (South Kirkland T.O.D.-Market Rate Housing Project) and the Housing Covenant and Regulatory Agreement (South Kirkland T.O.D.-Affordable Housing Project) substantially in the form of Attachments E and F, attached to this ordinance.

SECTION 6. Severability. If any one or more of the provisions of this ordinance shall be declared by any court of competent jurisdiction to be contrary to law, then such provision or provisions shall be null and void and shall be deemed separable from the remaining provisions of this ordinance and shall in no way affect the validity of the other provisions of this ordinance, the ground leases or the project leases and related easement agreements.

SECTION 7. For the reasons set forth in section 1 of this ordinance, the county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.