



Legislation Text

File #: 2004-0377, **Version:** 2

Clerk 09/30/2004

AN ORDINANCE approving ground leases of two sites from the county to Goat Hill Properties and a lease by Goat Hill Properties back to the county of a new parking garage and office building to be constructed on such sites; authorizing the county executive to execute final forms of the ground leases and project lease; approving certain provisions of the development and financing plan of Goat Hill Properties; agreeing to take unencumbered title to the parking garage and office building when bonds issued by Goat Hill Properties are discharged; and approving certain other provisions of the lease-lease back transaction.

PREAMBLE:

Pursuant to 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 has heretofore sought proposals for lease financing of the construction of a new parking garage and office building on privately owned land or on land owned by the county in downtown Seattle and has chosen Goat Hill Properties ("GHP"), a nonprofit corporation, and Wright Runstad Associates Limited Partnership ("Wright Runstad") to develop the project on two sites owned by the county by means of a lease-lease back transaction.

Terms of the ground leases, project lease and development agreement have been negotiated, and the county wishes to approve the ground leases and project lease and to approve GHP's plan for developing and financing the project, including the issuance of tax-exempt bonds to be secured

by a pledge of the county's payments under the project lease.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings.

A. The council hereby finds that the public interest, welfare and benefit require the county to acquire a new parking garage and office building ("the project") to be built on sites owned by the county in downtown Seattle by means of a lease-lease back transaction, authorized by the Municipal Leasing Act and in accordance with the procurement process heretofore authorized by the council. As a result of this process, Wright Runstad and GHP have been chosen to develop and manage construction of the project. Unless otherwise defined in this ordinance, capitalized terms used in this ordinance have the meanings given such terms in the Project Lease (as hereinafter defined).

B. The council further finds that so long as the average amount of Monthly Rent payable under the Project Lease does not exceed an average monthly rental rate of \$27.00 per square foot, such Monthly Rent payable under the Project Lease does not exceed prevailing rental rates for space and terms comparable to the Project.

SECTION 2. Approval of Ground Leases and Project Lease. The council hereby approves the Garage Ground Lease Agreement by and between the county, as lessor, and GHP, as lessee, in substantially the form of Attachment A to this ordinance ("the Garage Ground Lease"), the Building Ground Lease Agreement by and between the county, as lessor, and GHP, as lessee, in substantially the form of Attachment B to this ordinance ("the Building Ground Lease"), and the Project Lease Agreement by and between GHP, as lessor, and the county, as lessee, in substantially the form of Attachment C to this ordinance ("the Project Lease"). The county executive is hereby authorized to sign the Garage Ground Lease and Building Ground Lease ("the Ground Leases") and the Project Lease in substantially the forms of Attachments A, B and C to this ordinance, subject to such changes as may be requested by the underwriter or trustee for lease revenue bonds to be issued by GHP, as described in section 5 of this ordinance or the insurer (if any) of such bonds, and subject to those

changes that are approved by counsel to the county; provided, however, that (i) the term of each Ground Lease shall commence no earlier than the effective date of this ordinance and shall expire no later than December 31, 2044, (ii) the rent due under each Ground Lease shall not exceed \$100, (iii) the term of the Project Lease shall commence no earlier than the effective date of this ordinance and shall expire no later than December 31, 2039; and (iv) the average amount of Monthly Rent payable under the Project Lease shall not exceed an average monthly rental rate of \$27.00 per square foot. When fully executed, copies of the Ground Leases and Project Lease shall be filed with the clerk of the council.

SECTION 3. Pledge of Taxation and Credit. The county's obligation to pay rent under the Project Lease constitutes 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 a 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 Rent due under the Project Lease 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 4. Approval of GHP. For the sole purpose of complying with the requirements of Revenue Ruling 63-20 of the United States Department of Treasury (as compiled and supplemented by Revenue Procedure 82-26 of the United States Department of Treasury) (together, "the Ruling"), the county hereby approves GHP and the purposes and activities of GHP as described in its articles of incorporation, a copy of which is Attachment D to this ordinance, subject to the following terms and conditions:

- A. GHP shall remain a Washington nonprofit corporation and shall at all times operate on a nonprofit basis;
- B. None of the income of GHP shall inure to the benefit of any private person; and
- C. Upon discharge of the Bonds, GHP shall convey legal and unencumbered title and exclusive

possession and use of the Project to the county.

SECTION 5. Approval of Plan for Development and Financing. The council hereby acknowledges the intent of GHP to enter into a development agreement for the Project with Wright Runstad in substantially the form of Attachment E to this ordinance. For the purpose of complying with requirements of the Ruling, the county hereby acknowledges and approves the plan of GHP to develop the Project by entering into such development agreement with Wright Runstad and approves the tax-exempt lease revenue bonds in the aggregate principal amount of not to exceed \$104,000,000 that GHP proposes to issue to finance the Project ("the Bonds"). The county hereby acknowledges and approves the pledge to be made by GHP of revenues it will receive from the county under the Project Lease to secure payment of the Bonds in accordance with an indenture of trust to be entered into by GHP with a trustee for the Bonds. The county agrees that upon discharge of the Bonds, the county shall accept delivery of full legal and unencumbered title to the Project and exclusive possession and use of the Project for no additional consideration.

The county further acknowledges that, as lessee under the Project Lease, it will be an "obligated person" with respect to the Bonds under Rule 15c2-12 of the Securities and Exchange Commission ("the Rule"). To permit the underwriter of the Bonds to comply with the Rule, the council hereby approves the Undertaking for Ongoing Disclosure, relating to information about the county, the Ground Leases, the Project Lease and the leased premises, in substantially the form of Attachment F to this ordinance ("the Undertaking"). The county's manager of the finance and business operations division ("the Finance Director") is hereby authorized to sign the Undertaking in substantially the form of Attachment F to this ordinance, with such additions or deletions as are necessary or desirable to sell the Bonds. The Finance Director or his designee is also hereby authorized to "deem final" pursuant to the Rule information in any preliminary official statement for the Bonds about the county, the Ground Leases, the Project Lease and the leased premises.

SECTION 6. General Authorization. The appropriate county officials, agents, attorneys and representatives are hereby authorized and directed to do everything necessary and desirable to accomplish the

lease-lease back plan of acquiring a new parking garage and office building authorized by this ordinance and to do all things necessary or desirable to permit GHP to issue, sell and deliver the Bonds, including but not limited to the execution and delivery of such certificates and opinions relating thereto and to the Ground Leases and Project Lease as may be approved by counsel to the county.

SECTION 7. **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, the Project Lease or the Undertaking.

SECTION 8. **Effective Date.** This ordinance takes effect ten days after its enactment, in accordance with Article II of the county charter.