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Title: AN ORDINANCE authorizing the executive to execute documents for the improvement and leasing of a child care facility in the Chinook Building; amending Ordinance 14509, Section 36, as amended, and K.C.C. 4.56.180; and declaring an emergency.

Sponsors: Larry Gossett, Larry Phillips

Indexes: Children, Construction and Facilities Management (DCFM), Lease

Code sections:

Attachments: 1. 16745.pdf, 2. 2009-0637 Fiscal Note.xls, 3. 2009-0637 Transmittal Letter.doc, 4. 2009-0637 child care chinook SR at final (6).doc, 5. Amendment Package - 1-11-10pdf, 6. A. Covenants and Restrictions for Child Care Space, 7. B. Chinook Building Sublease Agreement Between King County Landlord and Northwest Center Tenant--September ____, 2009

Date	Ver.	Action By	Action	Result
1/11/2010	1	Metropolitan King County Council	Passed as Amended	Pass
1/4/2010	1	Metropolitan King County Council	Deferred	
1/4/2010	1	Metropolitan King County Council	Deferred	
11/23/2009	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE authorizing the executive to execute documents for the improvement and leasing of a child care facility in the Chinook Building; amending Ordinance 14509, Section 36, as amended, and K.C.C. 4.56.180; and declaring an emergency.

BE IT ORDAINED BY THE COUNTY COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. King County is the owner of the land at 401 Fifth Avenue, Seattle, in King County, Washington. Goat Hill Properties, a Washington nonprofit corporation, is leasing the land from King County under a Ground Lease dated as of January 1, 2005. Goat Hill Properties has developed a building on that land known as the Chinook Building through issuance of tax-exempt bonds, and has leased the Chinook Building back to King

County under a Project Lease Agreement dated as of January 1, 2005, as amended by a First Amendment to Project Lease and to Memorandum of Project Lease dated October 2005.

B. The Chinook Building has been developed pursuant to a Master Use Permit issued by the Seattle Department of Planning and Development, Project 2401763, which includes an allowance for certain bonus floor area based in part upon the voluntary agreement to provide approximately nine hundred eighty square feet of child care space pursuant to Seattle Municipal Code ("SMC") 23.49.012, using the "performance option" as described therein, and as set forth in that certain Covenant Regarding Bonus Floor Area recorded under King County recording no. 20070223002398 (DPD Covenant).

C. Wright Runstad Associates Limited Partnership, a Washington limited partnership and the developer of the Chinook Building, has represented in writing to King County that all other requirements of the Covenant Regarding Bonus Floor Area besides the child care space have been met.

D. The county has determined that it is in the public interest to have child care service provided in the Chinook Building, and to have that child care service set aside twenty percent of its available capacity for low income families.

E. Wright Runstad Associates Limited Partnership, as the developer of the Chinook Building and in cooperation with the county, rigorously solicited prospective child care providers and the county carefully selected the Northwest Center, a Washington non-profit corporation, as the most qualified candidate to provide child care services in the Chinook Building.

F. Northwest Center, consistent with the desires of the county, has negotiated an agreement with the city of Seattle human services department to receive funding for a substantial portion of the capital costs for tenant improvements for a child care facility in the Chinook Building. The funding from the city of Seattle is derived from cash option payments made with respect to permits for other properties under SMC 23.49.012. These cash option payments are required to be spent by the city of Seattle to fund capital expenditures for child care facilities.

G. The city of Seattle has approved its funding of the child care tenant improvements in the Chinook Building subject to various conditions required under SMC 23.12.012, including the granting of a twenty year covenant by the county in favor of the city of Seattle that requires that the portion of the Chinook Building to be improved for child care remain in that use for a period of twenty years and that the child care operator set aside twenty percent of its available capacity for low-income families (hereinafter "covenant").

H. In order to complete satisfaction of conditions to bonus floor area under SMC 23.49.012 and in order to induce the city to provide the funding to Northwest Center for tenant improvements for the child care facilities in the Chinook Building, the county is willing to execute and record the covenant.

I. The county desires to sublease to Northwest Center for twenty years approximately nine thousand eight hundred sixty square feet in the Chinook Building to be used by Northwest Center to operate a child care facility consistent with the requirements of the covenant and Northwest Center's agreement with the city of Seattle.

J. The sublease is an agreement for the use of county property with a bona fide nonprofit organization that will make improvements to county property and will provide services that will benefit the public in conformance with K.C.C. 4.56.150.E.

K. It is in the best interests of the county to enter into the sublease for a twenty year term, and the property to be leased complies with the requirements of K.C.C. 4.56.180.A.

L. Immediate action by the council approving the covenant and sublease is necessary for the successful completion of the project because the funding agreement between the city of Seattle and Northwest Center requires that the council authorize the execution and recording of a covenant committing to child care space in the Chinook Building for twenty years, with the covenant to be executed and recorded by the county and then the city before January 15, 2010. If this deadline is not met, the city of Seattle or Northwest Center could terminate their agreement. In addition, there is a maximum project budget that the contractor has orally agreed to honor, but the price could change if there were a delay in starting the project. This ordinance must be

enacted as an emergency ordinance to allow the covenant to be recorded before January 15, 2010 as required by the agreement between Seattle and Northwest Center.

SECTION 2. The King County executive is hereby authorized to execute and record a twenty year covenant for child care space in the Chinook Building in substantially the form of Attachment A to this ordinance, and is further authorized to execute a twenty year sublease for child care in the Chinook Building in substantially the form of Attachment B to this ordinance.

SECTION 3. The appropriate county officials, agents and employees are hereby authorized to take all actions necessary to implement the covenant and the sublease.

SECTION 4. Ordinance 14509, Section 36, as amended, and K.C.C. 4.56.180 are each hereby amended to read as follows:

A. The county may lease real property for a term of years and upon such terms and conditions as may be deemed in the best interests of the public and the county. A lease shall not be for a longer term in any one instance than ten years, except as follows:

1. If the county determines it to be in the best interest of the county, real property necessary to the support or expansion of an adjacent facility may be leased to the lessee of the adjacent facility for a term to expire simultaneously with the term of the lease of the adjacent facility, but not to exceed thirty-five years;

2. If the county determines it to be in the best interest of the county, if the property to be leased is improved or is to be improved and the value of the improvement is or will be at least equal to the value of the property to be leased, the county may lease the property for a term not to exceed thirty-five years;

3. If the property to be leased is to be used for public recreation and police training purposes, for parks and recreation purposes, for a hospital or a medical training and research facility, for a childcare facility to be improved with full or partial funding from a government-sponsored childcare bonus program, for the county's own use in accordance with a lease or leaseback arrangement entered into under K.C.C. 4.56.160 E or for major airport, industrial, office or other commercial purposes or transit-oriented development, requiring extensive

improvements, the county may lease the property for a term equal to the estimated useful life of the improvements, but not to exceed fifty years; unless the property is leased to a public housing authority or nonprofit organization in accordance with RCW 36.34.135, in which case the term may extend to seventy-five years; and

4. Leases entered into under K.C.C. 4.56.160 D may extend for the period of years necessary to amortize the special purpose funds, not to exceed twenty-five years.

B. The lessee shall not improve or alter the leased property in any manner without the prior written consent of the county, but shall, before making improvements or alterations, submit plans and designs for the improvement or alteration to the county for approval. If the plans and designs are disapproved, the improvements or alterations shall be made only with such changes as may be required by the county. Unless otherwise stipulated, all improvements or alterations erected or made on the leased property shall, on expiration or sooner termination of the lease, belong to the county without compensation to the lessee, but the county shall have the option, to be exercised on expiration or sooner termination of this lease, to require the lessee to remove any or all of the improvements or alterations. If the lessee fails substantially to make the improvements or alterations required by the lease, the lease shall be terminated and all rentals paid shall be forfeited to the county.

C. Except for lease or leaseback arrangements entered into under K.C.C. 4.56.160 E, any lease made for a period longer than five years shall contain provisions requiring the lessee to permit the rents to be adjusted and fixed by the county every five years, but any lease may provide for more frequent readjustments. If the lease permits the county to adjust the rent, the county shall give the lessee written notice of the adjusted rent, in accordance with the terms of the lease. The rent as adjusted shall take effect thirty days after the date of the notice unless the lessee, within thirty days following the receipt of the notice from the county, gives the county written notice of the lessee's rejection of the adjusted rent. If the lessee and the county cannot agree upon the rental readjustment, the rent shall be adjusted by arbitration. For arbitration, the lessee and the county shall

each select one disinterested arbitrator and the two selected arbitrators shall select a third. If the two arbitrators have not selected a third arbitrator within thirty days after the selection of the last selected of the two, either the lessee or the county shall apply to the presiding judge of the superior court for King County for the appointment of a third arbitrator. Each arbitrator must be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers or other appraisal society or association having equivalent ethical and professional standards. If a licensing requirement for real estate appraisers is imposed by any legislative body, each arbitrator shall also be so licensed. The three arbitrators shall determine a fair rent for the premises based upon the fair market rental value of the property, as defined in K.C.C. 4.56.010. The decision of a majority of the arbitrators shall bind both the lessee and the county. At the conclusion of the arbitration, the arbitrators shall submit written reports to the lessee and the county. The cost of the arbitration shall be divided equally between the lessee and the county.

D. Except as provided in K.C.C. 4.56.150 D and E and 4.56.160 D, the rent of all leases of county real property shall be based upon fair market rental value, as defined in K.C.C. 4.56.010.

E. No lease shall be assigned or subleased without the assignment or sublease being first authorized by the county in writing. All leases, when drawn, shall contain this provision.

F. Notwithstanding the other provisions of this chapter and following such procedures as may be determined appropriate by the council, the executive may enter into long-term master leases of county property under which developers: would develop the property into office and other space required or approved by the county; would lease some of space back to the county and may lease space unneeded by the county to private or public entities for private or public uses as approved by the county council; and would convey all leasehold improvements to the county at the expiration or termination of the master leases. A master lease shall be subject to approval by the council.

SECTION 5. 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.