



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 31, 2006

Ordinance 15633

Proposed No. 2006-0437.2

Sponsors Ferguson

1 AN ORDINANCE related to construction of facilities for
2 Harborview Medical Center; approving the ground lease of
3 a site at Ninth and Jefferson on the Harborview Medical
4 Center campus from the county to NJB Properties and a
5 project lease by NJB Properties to the county of a medical
6 services and office building, including parking facilities, to
7 be constructed on such site; authorizing the county
8 executive to execute the ground lease and project lease with
9 NJB Properties and an agreement with Harborview Medical
10 Center; approving certain provisions of the development
11 and financing plan of NJB Properties including the
12 county's pledge of taxation and credit to pay rent as
13 required by the project lease; agreeing to take
14 unencumbered title to the building when bonds issued by
15 NJB Properties are discharged; removing the remaining
16 work on the Ninth and Jefferson building from the
17 Harborview Bond Program and approving certain other

18 provisions of the build-to-suit, lease-lease back transaction;
19 and establishing independent project oversight of the Ninth
20 and Jefferson Building development.

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22

23 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

24 SECTION 1. Findings:

25 A. King County maintains Harborview Medical Center as a county hospital,
26 pursuant to state law, for the primary purpose of providing comprehensive health care to
27 the indigent, sick, injured or infirm of the county, and is dedicated to the control of illness
28 and the promotion and restoration of health within the King County area.

29 B. The county entered into an "Agreement for Project Management Services
30 between Harborview Medical Center Board of Trustees and King County and the
31 University of Washington relating to the Harborview Medical Center Bond Program"
32 dated March 13, 2002 ("management agreement") as authorized by Ordinance 14295.
33 The management agreement authorized the University of Washington to manage the
34 Harborview Medical Center bond program ("bond program"), which includes the design
35 and construction of certain public health and safety improvements for the Harborview
36 Medical Center campus such as seismic upgrades, renovations and construction of new
37 buildings for patient care, research, teaching and administration. The King County
38 council on April 7, 2003, approved the scope, budget, financing plan and schedule for the
39 bond program in Motion 11684, and on August 25, 2003, made modifications thereto in

40 Ordinance 14744. The bond program specifically included the design and construction of
41 a multi-purpose facility identified as the Ninth and Jefferson Building.

42 C. Subsequent to the commencement of the bond program, the county,
43 Harborview Medical Center and the University of Washington determined that due to
44 changed conditions resulting from significant construction cost increases for the Inpatient
45 Expansion Building element of the bond program it has become impractical to complete
46 the acquisition, construction and equipping of the Ninth and Jefferson Building as part of
47 the bond program. It is in the best interests of the public that the continued design and
48 construction of the Ninth and Jefferson Building be funded from the proceeds of bonds
49 approved by this ordinance that will be backed by Harborview Medical Center payments
50 from Harborview operating revenues. As a result, this ordinance removes the project
51 from the bond program. The Ninth and Jefferson project will no longer be managed by
52 the University of Washington under the bond program, but rather will be delivered under
53 an alternative financing, design and construction program in close coordination with the
54 Harborview Medical Center, the University of Washington and the bond program.

55 D. Pursuant to RCW 36.34.205, which incorporates by reference RCW 35.42.070
56 through 35.42.080 ("Municipal Leasing Act") and KCC 4.56.160, the county has
57 heretofore sought proposals for a build-to-suit, lease-lease back plan for the construction
58 of a medical services and office building, including parking facilities, on the Ninth and
59 Jefferson site owned by the county on the Harborview Medical Center campus ("the
60 project"). The county determined that this approach to the project was more efficient for
61 the county than county development of the project, and accordingly would lessen the
62 county's burden of providing these public health facilities that are necessary and desirable

63 for Harborview Medical Center, which satisfies the county's public interest, welfare and
64 benefit burdens. The county has selected a proposal from Wright Runstad Associates
65 Limited Partnership ("Wright Runstad") to develop the project in cooperation with NJB
66 Properties, a nonprofit corporation ("NJB"). Timely completion of the Project is
67 necessary to permit completion of other voter-approved projects to expand the critical
68 care capacity of Harborview Medical Center.

69 Terms of the ground lease, project lease and development agreement have been
70 negotiated, and the county wishes to approve the ground lease and project lease and to
71 approve NJB's plan for developing and financing the project, including the issuance of
72 bonds to be secured by a pledge of the county payment of rent as a tenant under the
73 project lease.

74 E. The council hereby finds that the public interest, welfare and benefit require
75 the county to acquire the project on the Harborview Medical Center campus so that the
76 Harborview Medical Center may carry out its public health mission. The council further
77 finds that a build-to-suit, lease-lease back transaction, as authorized by the Municipal
78 Leasing Act, would reduce the governmental burden associated with development of the
79 project, and the council approves the county's process for seeking proposals for such a
80 transaction. The council further finds that the proposal by Wright Runstad and NJB is the
81 most efficient proposal for financing, developing and managing construction of the
82 project.

83 F. The council further finds that so long as the average amount of monthly rent
84 payable under the project lease does not exceed an average monthly rental rate of two
85 dollars and fifty-eight cents per square foot, the monthly rent payable under the project

86 lease does not exceed prevailing rental rates for space and terms comparable to the
87 project.

88 G. The Harborview Medical Center board of trustees ("the board") has made the
89 following financial commitments to the county to ensure the payment of rent under the
90 project lease without use of general county revenue and to ensure that the project is a
91 prudent public investment of scarce capital resources. The board on September 28, 2006,
92 resolved "that the Harborview Medical Center Board of Trustees supports the newly
93 designed Ninth and Jefferson Building. This includes the Board agreeing to annually
94 commit in its budget sufficient HMC funds to pay the monthly rent under the lease
95 agreement and any additional rent due under the lease, and all costs (including costs of
96 maintenance and operation), fees, taxes and assessments and liabilities associated with
97 the County's leasehold." This pledge incorporates the funds and commitments previously
98 made by the board to support the bond program as identified in the management
99 agreement and Ordinance 14744. In enacting this ordinance, the county relies upon this
100 commitment from the Harborview Medical Center board to fund all costs associated with
101 the project lease to substantially reduce the risk that county general tax revenues will be
102 required to pay any costs of the project, and the county would not have enacted this
103 ordinance absent such commitment.

104 **SECTION 2. Approval of ground lease and project lease.** The council, subject
105 to section 9 of this ordinance, hereby approves the ground lease agreement by and
106 between the county, as lessor, and NJB, as lessee, in substantially the form set forth as
107 Attachment A to this ordinance (the "ground lease"), and the project lease agreement by
108 and between NJB, as landlord, and the county, as tenant, in substantially the form set

109 forth as Attachment B to this ordinance ("project lease"). The county executive is hereby
110 authorized to sign the ground lease and the project lease in substantially the forms set
111 forth as Attachments A and B to this ordinance, subject to such changes, not inconsistent
112 with the material terms of this ordinance, as may be requested by the underwriter, bond
113 insurer (if any) or trustee for lease revenue bonds to be issued by NJB, as described in
114 section 5 of this ordinance ("bonds"), and subject to those changes, not inconsistent with
115 the material terms of this ordinance, that are approved by counsel to the county, including
116 without limitation changes necessary to take advantage of the high tech sales and use tax
117 deferral for portions of the project, except that: A. The term of the ground lease shall
118 commence no earlier than the effective date of this ordinance and shall expire no later
119 than December 31, 2041, and the rent due under the ground lease shall not exceed one
120 hundred dollars; and B. The term of the project lease shall commence no earlier than the
121 effective date of this ordinance and shall expire no later than December 31, 2041, the
122 average amount of monthly rent payable under the project lease shall not exceed an
123 average monthly rental rate of two dollars and fifty-eight cents per square foot. When
124 fully executed, copies of the ground lease and project lease shall be filed with the clerk of
125 the council.

126 **SECTION 3. Pledge of taxation and credit.** The county's obligation to pay rent
127 under the project lease constitutes a limited tax general obligation of the county. The
128 county hereby irrevocably covenants and agrees that it will include in its annual budget
129 and levy taxes annually on all taxable property within the county, within and as a part of
130 the tax levy permitted to the county without a vote of the electors, in amounts sufficient,
131 together with all other money legally available and to be used therefor, to pay the

132 monthly rent and any additional rent due under the project lease as the same shall become
133 due. The full faith, credit and resources of the county are irrevocably pledged for the
134 annual levy and collection of such taxes and the prompt payment of such amounts.

135 **SECTION 4. Approval of NJB.**

136 A. For the sole purpose of complying with the requirements of Revenue Ruling
137 63-20 of the United States Department of Treasury (as compiled and supplemented by
138 Revenue Procedure 82-26 of the United States Department of Treasury) (together, "the
139 ruling"), so that all or a portion of the bonds may be tax-exempt, the county hereby
140 approves NJB and the purposes and activities of NJB as described in its articles of
141 incorporation (which purposes are public in nature), a copy of which is Attachment C to
142 this ordinance, subject to the following terms and conditions:

143 1. NJB shall remain a Washington nonprofit corporation and shall at all times
144 operate on a nonprofit basis;

145 2. None of the income of NJB shall inure to the benefit of any private person;
146 and

147 3. Upon discharge of the bonds, NJB shall convey legal and unencumbered title
148 and exclusive possession and use of the Project to the county.

149 B. The county requests that NJB undertake the development of the project and
150 thereby relieve the county of the governmental burden of providing these public health
151 facilities that are desirable for the Harborview Medical Center, which satisfies the
152 county's public interest, welfare and benefit burdens.

153 **SECTION 5. Approval of plan for development and financing.** The council
154 hereby acknowledges the intent of NJB to enter into a development agreement for the

155 Project with Wright Runstad in substantially the form set forth as Attachment D to this
156 ordinance. For the purpose of complying with requirements of the ruling, the county
157 hereby acknowledges and approves NJB's plan to develop the project by entering into
158 such development agreement with Wright Runstad and approves the lease revenue bonds
159 in the aggregate principal amount of not to exceed two hundred and ten million dollars
160 that NJB proposes to issue to finance the project. The county hereby acknowledges and
161 approves NJB's pledge of revenues it will receive from the county under the project lease
162 to secure payment of the bonds in accordance with an indenture of trust to be entered into
163 by NJB with a trustee for the bonds. The county agrees that upon discharge of the bonds,
164 the county shall accept delivery of full legal and unencumbered title to the project and
165 exclusive possession and use of the project for no additional consideration.

166 The county further acknowledges that, as tenant under the project lease, it will be
167 an "obligated person" with respect to the bonds under Rule 15c2-12 of the Securities and
168 Exchange Commission ("the rule"). To permit the underwriter of the bonds to comply
169 with the rule, the council hereby approves the Undertaking for Ongoing Disclosure,
170 relating to information about the county, the ground lease, the project lease and the leased
171 premises, in substantially the form set forth as Attachment E to this ordinance ("the
172 undertaking"). The director of the county's finance and business operations division
173 ("finance director") is hereby authorized to sign the undertaking in substantially the form
174 set forth as Attachment E to this ordinance, with such additions or deletions as are
175 necessary or desirable to sell the bonds. The finance director or his designee is also
176 hereby authorized to "deem final" pursuant to the rule information in any preliminary

177 official statement for the bonds about the county, the ground lease, the project lease and
178 the leased premises.

179 **SECTION 6. General authorization.** The appropriate county officials, agents,
180 attorneys and representatives are hereby authorized and directed to do everything
181 necessary and desirable to accomplish the build-to-suit, lease-lease back plan for
182 construction of the project as authorized by this ordinance, including but not limited to
183 the conveyance of interests in real property required by a permitting agency as a
184 condition of developing the project, and to do all things necessary or desirable to permit
185 NJB to issue, sell and deliver the bonds, including but not limited to the execution and
186 delivery of an acknowledgement of NJB's sale of the bonds to the underwriter thereof and
187 such other certificates and opinions relating thereto and to the ground lease and project
188 lease as may be approved by counsel to the county.

189 **SECTION 7. Change of scope of bond program.** The council hereby
190 determines that it is impractical to continue the acquisition, construction and equipping of
191 the Ninth and Jefferson Building within funds available in the bond program, and
192 therefore approves and modifies the bond program scope, budget, financing plan and
193 schedule by removing the remaining work on the Ninth and Jefferson Building from the
194 bond program.

195 **SECTION 8. Harborview Medical Center definition.** Upon completion, the
196 project shall be part of the medical center as that term is defined in K.C.C. 2.42.010.G.

197 **SECTION 9. Agreement with Harborview Medical Center board.** The
198 council hereby authorizes and directs the executive to enter into a binding agreement with
199 the Harborview Medical Center board whereby the board agrees to carry out the

200 commitment made by the board in its September 28, 2006, resolution supporting the
201 project. The executive may not execute the ground lease or project lease until such a
202 binding agreement with the board is fully executed.

203 **SECTION 10. Independent county oversight of project.** Independent county
204 oversight of the project shall be provided by the King County Auditor and consultants
205 managed by that office. Fifty percent of the costs of the oversight shall be paid from
206 operating revenues of the Harborview Medical Center. Harborview Medical Center shall
207 not be obligated to pay more than one hundred thousand dollars for the oversight. Fifty
208 percent of the costs of the oversight shall be paid from funds available to the facilities
209 management division and not otherwise obligated. Oversight activities conducted by the
210 King County auditor staff and consultants shall include analysis and monthly reporting on
211 project scope, schedule and budget. At least one copy of the report shall be filed with the
212 Harborview Medical Center and the facilities management division and four copies of the
213 report shall be filed with the clerk of the council, for distribution to the chair and lead
214 staff of the capital budget committee or its successor.

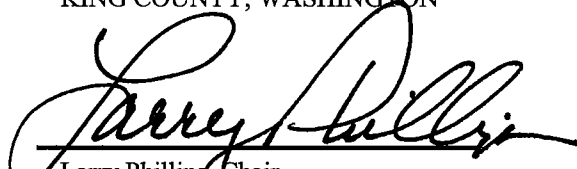
215 **SECTION 11. Severability.** If any one or more of the provisions of this
216 ordinance shall be declared by any court of competent jurisdiction to be contrary to law,
217 then such provision or provisions shall be null and void and shall be deemed separable
218 from the remaining provisions of this ordinance and shall in no way affect the validity of

219 the other provisions of this ordinance, the ground lease, the project lease or the
220 undertaking.
221

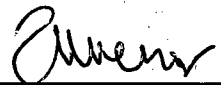
Ordinance 15633 was introduced on 9/25/2006 and passed as amended by the Metropolitan King County Council on 10/30/2006, by the following vote:

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


KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 31 day of OCTOBER, 2006.


Ron Sims, County Executive

RECEIVED
2006 OCT 31 PM 2: 02
CLERK
KING COUNTY COUNCIL

Attachments

- A. Ground Lease Agreement between King County, a political subdivision of the State of Washington as Lessor and NJB Properties, a Washington nonprofit corporation as Lessee, dated November 1, 2006, B. Project Lease Agreement between NJB Properties, a Washington nonprofit corporation as Landlord and King County, a political subdivision of the State of Washington as Tenant, dated November 1, 2006, C. NJB's Articles of Incorporation--Ninth Avenue and Jefferson Building, D. Harborview Ninth and Jefferson Building Development Agreement, dated the 1st day of November 2006, E King County, Washington Undertaking for Ongoing Disclosure dated November 1, 2006