



Legislation Text

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AN ORDINANCE related to construction of facilities for Harborview Medical Center; approving the ground lease of a site at Ninth and Jefferson on the Harborview Medical Center campus from the county to NJB Properties and a project lease by NJB Properties to the county of a medical services and office building, including parking facilities, to be constructed on such site; authorizing the county executive to execute the ground lease and project lease with NJB Properties and an agreement with Harborview Medical Center; approving certain provisions of the development and financing plan of NJB Properties including the county's pledge of taxation and credit to pay rent as required by the project lease; agreeing to take unencumbered title to the building when bonds issued by NJB Properties are discharged; removing the remaining work on the Ninth and Jefferson building from the Harborview Bond Program and approving certain other provisions of the build-to-suit, lease-lease back transaction; and establishing independent project oversight of the Ninth and Jefferson Building development.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

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

B. The county entered into an "Agreement for Project Management Services between Harborview Medical Center Board of Trustees and King County and the University of Washington relating to the Harborview Medical Center Bond Program" dated March 13, 2002 ("management agreement") as authorized by Ordinance 14295. The management agreement authorized the University of Washington to manage the Harborview Medical Center bond program ("bond program"), which includes the design and construction of certain public health and safety improvements for the Harborview Medical Center campus such as seismic upgrades, renovations and construction of new buildings for patient care, research, teaching and administration. The King County council on April 7, 2003, approved the scope, budget, financing plan and schedule for the bond program in Motion 11684, and on August 25, 2003, made modifications thereto in Ordinance 14744. The bond program specifically included the design and construction of a multi-purpose facility identified as the Ninth and Jefferson Building.

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

D. Pursuant to RCW 36.34.205, which incorporates by reference RCW 35.42.070 through 35.42.080 ("Municipal Leasing Act") and KCC 4.56.160, the county has heretofore sought proposals for a build-to-suit,

lease-lease back plan for the construction of a medical services and office building, including parking facilities, on the Ninth and Jefferson site owned by the county on the Harborview Medical Center campus ("the project"). The county determined that this approach to the project was more efficient for the county than county development of the project, and accordingly would lessen the county's burden of providing these public health facilities that are necessary and desirable for Harborview Medical Center, which satisfies the county's public interest, welfare and benefit burdens. The county has selected a proposal from Wright Runstad Associates Limited Partnership ("Wright Runstad") to develop the project in cooperation with NJB Properties, a nonprofit corporation ("NJB"). Timely completion of the Project is necessary to permit completion of other voter-approved projects to expand the critical care capacity of Harborview Medical Center.

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

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

F. 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 two dollars and fifty-eight cents per square foot, the monthly rent payable under the project lease does not exceed prevailing rental rates for space and terms comparable to the project.

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

SECTION 2. Approval of ground lease and project lease. The council, subject to section 9 of this ordinance, hereby approves the ground lease agreement by and between the county, as lessor, and NJB, as lessee, in substantially the form set forth as Attachment A to this ordinance (the "ground lease"), and the project lease agreement by and between NJB, as landlord, and the county, as tenant, in substantially the form set forth as Attachment B to this ordinance ("project lease"). The county executive is hereby authorized to sign the ground lease and the project lease in substantially the forms set forth as Attachments A and B to this ordinance, subject to such changes, not inconsistent with the material terms of this ordinance, as may be requested by the underwriter, bond insurer (if any) or trustee for lease revenue bonds to be issued by NJB, as described in section 5 of this ordinance ("bonds"), and subject to those changes, not inconsistent with the material terms of this ordinance, that are approved by counsel to the county, including without limitation changes necessary to take advantage of the high tech sales and use tax deferral for portions of the project, except that: A. The term

of the ground lease shall commence no earlier than the effective date of this ordinance and shall expire no later than December 31, 2041, and the rent due under the ground lease shall not exceed one hundred dollars; and B. 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, 2041, the average amount of monthly rent payable under the project lease shall not exceed an average monthly rental rate of two dollars and fifty-eight cents per square foot. When fully executed, copies of the ground lease 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 therefor, 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 NJB.

A. 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"), so that all or a portion of the bonds may be tax-exempt, the county hereby approves NJB and the purposes and activities of NJB as described in its articles of incorporation (which purposes are public in nature), a copy of which is Attachment C to this ordinance, subject to the following terms and conditions:

1. NJB shall remain a Washington nonprofit corporation and shall at all times operate on a nonprofit basis;
2. None of the income of NJB shall inure to the benefit of any private person; and

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

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

SECTION 5. Approval of plan for development and financing. The council hereby acknowledges the intent of NJB to enter into a development agreement for the Project with Wright Runstad in substantially the form set forth as Attachment D to this ordinance. For the purpose of complying with requirements of the ruling, the county hereby acknowledges and approves NJB's plan to develop the project by entering into such development agreement with Wright Runstad and approves the lease revenue bonds in the aggregate principal amount of not to exceed two hundred and ten million dollars that NJB proposes to issue to finance the project. The county hereby acknowledges and approves NJB's pledge 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 NJB 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 tenant 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 lease, the project lease and the leased premises, in substantially the form set forth as Attachment E to this ordinance ("the undertaking"). The director of the county's finance and business operations division ("finance director") is hereby authorized to sign the undertaking in substantially the form set forth as Attachment E 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 lease, 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 build-to-suit, lease-lease back plan for construction of the project as authorized by this ordinance, including but not limited to the conveyance of interests in real property required by a permitting agency as a condition of developing the project, and to do all things necessary or desirable to permit NJB to issue, sell and deliver the bonds, including but not limited to the execution and delivery of an acknowledgement of NJB's sale of the bonds to the underwriter thereof and such other certificates and opinions relating thereto and to the ground lease and project lease as may be approved by counsel to the county.

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

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

SECTION 9. Agreement with Harborview Medical Center board. The council hereby authorizes and directs the executive to enter into a binding agreement with the Harborview Medical Center board whereby the board agrees to carry out the commitment made by the board in its September 28, 2006, resolution supporting the project. The executive may not execute the ground lease or project lease until such a binding agreement with the board is fully executed.

SECTION 10. Independent county oversight of project. Independent county oversight of the project shall be provided by the King County Auditor and consultants managed by that office. Fifty percent of the

costs of the oversight shall be paid from operating revenues of the Harborview Medical Center. Harborview Medical Center shall not be obligated to pay more than one hundred thousand dollars for the oversight. Fifty percent of the costs of the oversight shall be paid from funds available to the facilities management division and not otherwise obligated. Oversight activities conducted by the King County auditor staff and consultants shall include analysis and monthly reporting on project scope, schedule and budget. At least one copy of the report shall be filed with the Harborview Medical Center and the facilities management division and four copies of the report shall be filed with the clerk of the council, for distribution to the chair and lead staff of the capital budget committee or its successor.

SECTION 11. 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 lease, the project lease or the undertaking.