



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 2, 2017

Ordinance 18504

Proposed No. 2015-0448.2

Sponsors McDermott and Upthegrove

1 AN ORDINANCE relating to the authorization of an
2 amendment and extension to an existing lease at 8869
3 Southeast View Park Road, Port Orchard, Washington, to
4 support the operations of the department of information
5 technology.

6 STATEMENT OF FACTS:

- 7 1. The facilities management division contacted the department of
8 information technology in May 2014 and received approval to amend and
9 extend a lease with GTP Towers I, LLC, for space in the View Park
10 Tower, 8869 Southeast View Park Road, Port Orchard, Washington. The
11 lease was originally executed on October 1, 1999.
- 12 2. The department of information technology needed space for the
13 purpose of providing emergency radio communications.
- 14 3. The facilities management division determined in July 2014 that there
15 was not an appropriate county-owned option.
- 16 4. The facilities management division determined, through consultation
17 with the department of information technology, that amending and
18 extending the lease was the most cost-effective option for the county.
- 19 5. The facilities management division successfully negotiated an

20 amendment to the lease.

21 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

22 SECTION 1. The executive is authorized to execute an amendment and extension
23 to the lease for the View Park Tower with GTP Towers I, LLC, substantially in the form

24 of Attachment A to this ordinance, and to take all actions necessary to implement the
25 terms of the lease.
26

Ordinance 18504 was introduced on 11/9/2015 and passed by the Metropolitan King County Council on 5/1/2017, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

J. Joseph McDermott, Chair

RECEIVED
2017 MAY 10 PM 3:42
CLERK
KING COUNTY COUNCIL

ATTEST:

Melani Pedroza, Acting Clerk of the Council

APPROVED this 9th day of May, 2017.

Dow Constantine, County Executive

Attachments: A. Second Amendment To Telecommunications Site Rental Agreement, dated March 22, 2017

Dated March 22, 2017

ATTACHMENT A:

**SECOND AMENDMENT TO TELECOMMUNICATIONS SITE
RENTAL AGREEMENT**

Landlord Site Name / Number: View Park / 375151

Landlord Contract Number: GTP10765

User Site Name / Number: View Park / 1667

**SECOND AMENDMENT TO TELECOMMUNICATIONS SITE RENTAL
AGREEMENT**

This Second Amendment (the "Second Amendment") to that certain Telecommunications Site Rental Agreement dated September 21, 1999 by and between KPLU-FM Pacific Lutheran University and King County, as amended by that certain First Amendment to Telecommunications Site Rental Agreement dated January 12, 2010 (the "First Amendment") (collectively, the "Agreement") is made and entered into as of the latter signature date hereof, by and between GTP Towers I, LLC, a Delaware limited liability company, as successor-in-interest to the KPLU-FM Pacific Lutheran University (the "Landlord") and King County, a political subdivision of the State of Washington (the "USER") (collectively, the "Parties").

RECITALS

WHEREAS, Landlord owns a certain communications tower and leases a certain parcel of land located at 8869 View Park Road Southeast, Port Orchard, WA 98447 more commonly known to Landlord as the View Park, WA tower site (the "Property"); and

WHEREAS, the Parties entered into the Agreement for the use of a certain portion of the Property; and

WHEREAS the Agreement expired by its own terms on September 30, 2014; and

WHEREAS, the Parties agree to retroactively extend the term of the Agreement and to amend the Agreement in part, all on the terms and conditions as set forth herein.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

- 1) Section 2.1 of the Agreement is amended by deleting the last sentence and replacing it with the following:

The term of this Agreement is extended commencing retroactively on October 1, 2014 (the "Extension Term Commencement Date") for a period of five (5) years through September 30, 2019 (the "Extension Term"). The Parties agree that this Agreement may be further extended and renewed for five (5) additional periods of one (1) year each ("Renewal Terms") following the Extension Term. This Agreement shall automatically renew for each successive Renewal Term unless either Party notifies the other in writing of its intention not to renew this Agreement at least 180 days prior to the end of the then existing Term.

- 2) Section 2.4 of the Agreement is amended by deleting the entirety of the text of Section 2.4 and replacing it with the following:

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Landlord acknowledges that the USER's fiscal budget is subject to biennial appropriation by the King County Council pursuant to the laws of King County. Accordingly, notwithstanding anything to the contrary contained herein, so long as King County shall be the USER under this Agreement, in the event that the King County Council shall fail to appropriate the required funds for any fiscal year or portion thereof during the Term hereof (the "Funding Shortfall"), and if, as a result of the Funding Shortfall, USER lacks sufficient funding to pay the rental rate and other payment obligations of USER under this Agreement, USER shall have the right to terminate this Agreement by notice to Landlord within sixty (60) days after the date USER receives notice of any Funding Shortfall (the "Shortfall Notice"), which Shortfall Notice shall include a certification from a duly authorized official of USER stating that the termination of this Agreement is the result of the Funding Shortfall. If USER shall give a timely Shortfall Notice with the required certification, the Term of this Agreement shall terminate on the last day of the month through which this Agreement shall be funded. In the event USER shall fail to give a timely Shortfall Notice together with the required certification, this Agreement shall continue in full force and effect in accordance with its terms. USER shall pay the rental rate and all other amounts due under this Agreement exclusively from legally available funds. USER shall not be subject to any obligation under this Agreement to pay any termination penalties.

- 3) Section 3 of the Agreement is amended by deleting the entirety of the text of Section 3 and replacing it with the following:

USER shall pay to Landlord a base rental rate of Four Thousand Seven Hundred Ninety-Two and 57/100 Dollars (\$4,792.57) per month in advance on or before the first (1st) day of each month of the first year of the Extension Term. In the event any rental rate payment is not paid within fifteen (15) days after it becomes due, a late fee equal to five percent (5%) of such overdue amount will be charged. All payments required by USER shall be made without deduction or offset to Landlord at the address listed below or at such other place as the Landlord may designate in writing. Upon the first anniversary of the Extension Term Commencement Date, and on each anniversary thereafter through the term and any Renewal Terms, the rental rate shall be adjusted by three and one-half percent (3.5%). The fee for any fractional month at the beginning or end of the period shall be appropriately prorated.

- 4) Section 4.2 of the Agreement is amended by deleting the entirety of the text of Section 4.2 and replacing it with the following:

A. USER shall pay to Landlord a Utility Fee at the initial rate of Eight Hundred Fifty and 26/100 Dollars (\$850.26) per month (the "Utility Fee") representing the cost of electricity provided by Landlord for operation of USER's equipment and use and availability of the emergency back-up power generator (the "Generator"). USER shall not draw in excess of 30kWh of power at any time

from the Generator without Landlord's written consent, which consent may be granted or withheld in Landlord's sole discretion and may be conditioned upon an increase in the Utility Fee. The Utility Fee shall be payable in advance on the first (1st) day of each month during the Term beginning upon the Extension Term Commencement Date. If Landlord determines, in its reasonable discretion, that USER's utility usage has increased over USER's utility usage as of the Extension Term Commencement Date, or as of the date of the last Utility Fee increase resulting from increased utility usage, Landlord may, but is not required, to modify the Utility Fee by an amount equal to Landlord's actual increased costs incurred due to USER's increased utility usage. If such a modification in the Utility Fee is imposed, Landlord shall notify USER in writing of such increase in the Utility Fee and, upon request, document the basis for the increase. Any such change in the Utility Fee resulting from an increase in USER's utility usage will take effect with the next payment of the Utility Fee coming due after USER's receipt of such notice.

B. In the event that (i) USER elects to change its utility service to be separately metered from Landlord's utilities, or (ii) USER powers down its use of its equipment (each a "Utility Change Event"), USER shall provide a 30 day prior written notice to Landlord with supporting information relating to its electric use status for such Utility Change Event. Notwithstanding the above, USER shall pay to Landlord the cost of all utility services drawn from Landlord's meter until USER terminates all of its electric use at the Property, except that utility costs will be abated for the period of USER's powering down period provided USER submits prior written notice to Landlord, as provided above. USER acknowledges that it shall remain responsible for any utility charges provided herein prior to Landlord's receipt of a notice a Utility Change Event including those incurred following the expiration of this Agreement but prior to the removal of USER's equipment.

C. The determination as to whether or not to repair, maintain or replace the Generator shall be in Landlord's sole discretion. USER shall reimburse Landlord for its pro-rata share of all expenses incurred for the operation, maintenance, repair and replacement associated with such Generator, including, without limitation, fuel expenses. For the purposes of this Section, a "pro-rata share" of costs and expenses shall be determined based on the number of tenants using the Generator. Notwithstanding the foregoing, the cost and expenses associated with any damage which is directly attributable to the acts or omissions of USER or USER's contractors shall be borne solely by USER. If the Generator becomes unavailable to USER, then Landlord shall provide written notice to USER and the Utility Fee shall decrease by Four Hundred and 00/100 Dollars (\$400.00).

- 5) Section 6.2 of the Agreement is amended by deleting the entirety of the text of Section 6.2 and replacing it with the following:

Landlord Site Name / Number: View Park / 375151

Landlord Contract Number: GTP10765

User Site Name / Number: View Park / 1667

Landlord and USER shall at all times comply with all applicable statutes, ordinances, laws, regulations and directives of any federal, state, county, municipal or local governmental unit, authority or agency having jurisdiction over the Property or affecting the rights and obligations of Landlord or USER under this Agreement.

- 6) Section 15 of the Agreement is amended by deleting the address for Landlord following "If to Landlord:" and replacing it with the following:

GTP Towers I, LLC
c/o Citibank N.A.
Dept 3328
Carol Stream, IL 60132-3328

- 7) A new Section 20.6 is added to the Agreement as follows:

Landlord shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Landlord shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Agreement and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Agreement and may result in ineligibility for further agreements with USER.

- 8) The Parties agree that this Second Amendment will apply retroactively and shall amend the Agreement effective as of the Extension Term Commencement Date. The Parties further agree that since the Extension Term Commencement Date, the Agreement has remained in full force and effect and never expired. The Parties further agree that since the Extension Term Commencement Date, all rent due under the Agreement has been paid in full by the USER.
- 9) Capitalized terms contained herein, unless otherwise defined, are intended to have the same meaning and effect as that set forth in the Agreement.
- 10) Except as modified in this Second Amendment, the terms and conditions of the Agreement shall continue in full force and effect and are hereby ratified and confirmed.

[SIGNATURES APPEAR ON PAGE 6]

18504

Landlord Site Name / Number: View Park / 375151

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[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

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IN WITNESS WHEREOF, the Parties hereto have set their hands to this Second Amendment to that certain Telecommunications Site Rental Agreement as of the day and year written below:

LANDLORD:

GTP Towers I, LLC,
a Delaware limited liability company

By: 

Name: Margaret Robinson
~~Senior Counsel~~

Title: _____

Date: 3-9-17

USER:

King County, a political subdivision
of the State of Washington

By: _____

Anthony Wright, Director
Facilities Management Division

Date: _____

APPROVED AS TO FORM ONLY:

By: _____

Don Woodworth,
Senior Deputy Prosecuting Attorney
King County, Washington

Date: _____

Landlord Site Name / Number: View Park / 375151

Landlord Contract Number: GTP10765

User Site Name / Number: View Park / 1667

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that Anthony Wright signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument and acknowledged it as the Director of the Facilities Management Division of King County, Washington, to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC

(printed name)

in and for the State of Washington residing at

_____ My

appointment expires _____.

STATE OF Massachusetts)
) ss
COUNTY OF Middlesex)

I certify that Margaret Robinson signed this instrument, on oath stated that they were authorized by GTP Towers I, LLC, to execute the instrument, and acknowledged it as the Senior Counsel of GTP Towers I, LLC, to be the free and voluntary act of said company for the uses and purposes mentioned in the instrument.

Date: 3-9-17

Lisa A. Giuffrida

NOTARY PUBLIC

Lisa A. Giuffrida
(printed name)

in and for the State of Massachusetts

residing at Woburn, MA My

appointment expires 11-26-21.



LISA A. GIUFFRIDA
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 26, 2021