



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

August 30, 2016

Ordinance 18339

Proposed No. 2016-0373.1

Sponsors Upthegrove

1 AN ORDINANCE relating to the authorization of a second
2 amendment to an existing lease at 3203 S. 360th, Auburn,
3 Washington, to support the Puget Sound Emergency Radio
4 Network.

5 STATEMENT OF FACTS:

6 1. King County has established a capital improvement project ("the
7 PSERN project") to build the Puget Sound Emergency Radio Network
8 ("PSERN").

9 2. In 2015 King County voters approved Proposition 1 and King County
10 adopted Ordinances 17993, 18074 and 18075, to fund the planning,
11 deployment and testing of PSERN.

12 3. King County entered into a contract with Motorola Solutions, Inc. that
13 requires Motorola to identify the sites needed for PSERN's
14 communications equipment together with a list of equipment needed at
15 each site. Motorola identified South King Fire and Rescue's Federal Way
16 property as one of the needed sites.

17 4. The PSERN project, with the oversight of King County's Facilities
18 Management Division, successfully negotiated a second amendment to the
19 lease with South King Fire and Rescue that would enable the PSERN

20 project to continue using the site located at 3203 S. 360th, Auburn,
21 Washington, in council district seven.

22 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

23 SECTION 1. The executive is authorized to execute a second amendment to the
24 lease for the property located at 3203 S. 360th, Auburn, Washington with South King

25 Fire and Rescue, substantially in the form of Attachment A to this ordinance, and to take
26 all actions necessary to implement the terms of the second amendment to the lease.
27

Ordinance 18339 was introduced on 7/25/2016 and passed by the Metropolitan King County Council on 8/29/2016, 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

ATTEST:



Anne Noris, Clerk of the Council

RECEIVED
2016 SEP - 1 PM 4: 03
CLERK
KING COUNTY COUNCIL

APPROVED this 1 day of SEPTEMBER 2016.



Dow Constantine, County Executive

Attachments: A. Lease Amendment

ATTACHMENT A:

LEASE AMENDMENT

**AMENDMENT NO. 2
TO
COMMUNICATION SITE LEASE**

THIS AMENDMENT NO. 2 TO COMMUNICATION SITE LEASE (“**Second Amendment**”) is made by and between the South King Fire and Rescue, having offices for the transaction of business at 31617 First Avenue South, Federal Way, WA 98003 (“**Lessor**”) and King County, a political subdivision of the State of Washington, having offices for the transaction of business at 500 Fourth Avenue, Suite 830, Seattle, Washington 98104 (“**Lessee**”). Lessor and Lessee may jointly be referred to herein as the “**Parties**” or individually, a “**Party**.” The “**Effective Date**” of this Second Amendment shall be the last date signed by an authorized Party representative.

RECITALS

I. **WHEREAS**, Federal Way Fire Department and Lessee entered into that certain Communication Site Lease, fully executed on June 22, 1999, as amended by that certain Amendment No. 1 to Communication Site Lease, entered into by Federal Way Fire District and Lessee, fully executed on October 18, 2004 (collectively, the “**Lease**”), whereby Lessee has leased the “**Premises**” for the construction and operation of Lessee’s “**Antenna Facilities**” on real property located at 3203 S. 360th, Auburn, King County, Washington 98001 (“**Property**”).

II. **WHEREAS**, fee simple interest in the Property was acquired by King County Fire Protection District #39 in 1978, which entity subsequently merged into South King Fire and Rescue, pursuant to Ordinance 15307 adopted November 3, 2005.

III. **WHEREAS**, Lessee plans to fund, procure sites for, and along with other municipalities in King County establish the Puget Sound Emergency Radio Network (the “**PSERN System**”) to eventually provide emergency communications service in King County as authorized by Proposition 1 and King County Ordinances 17993, 18074 and 18075.

IV. **WHEREAS**, in order to use the Property for the PSERN System, Lessee desires to modify its Antenna Facilities, and the Parties desire to amend the Lease as set forth herein below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lessor**. The Recitals set forth above are incorporated herein. The Parties hereby acknowledge and agree that South King Fire and Rescue is the current fee simple owner of the Property and the correct Lessor under the Lease. South King Fire and Rescue hereby ratifies and affirms all actions of the Federal Way Fire Department and Federal Way Fire District in entering into the Lease, granting Lessee use of the Premises for its Antenna Facilities, and management of the Premises prior to the full execution of this Second Amendment, and hereby confirms that the Lease remains in full force and effect, as amended by this Second Amendment.

2. **Premises**. By execution of this Second Amendment, Lessor hereby consents to Lessee’s construction, installation, operation, maintenance, repair, replacement, upgrade, update and removal of

the antennas, cabinet, associated cables and equipment, as more completely described on the attached Exhibit #1-A annexed hereto, which Exhibit #1-A is a supplement to and incorporated into Exhibit #1 of the Lease. In the event of any inconsistencies between Lessee's Premises and Antenna Facilities set out in Exhibit #1 and that set out in Exhibit #1-A, the Premises and Antenna Facilities set out in Exhibit #1-A shall control. No less than fifteen (15) days prior to the commencement of any work necessary to effect the modifications contemplated herein, Lessee shall provide Lessor with a passing structural report and written notice of Lessee's anticipated construction schedule.

3. **Term.** Notwithstanding anything in the Lease to the contrary, as of the date Lessee commences modification of its Antenna Facilities for use of the PSERN System on the Premises ("**Commencement Date**"), the terms of Section 2.A. of the Lease shall be deleted in their entirety, and the new "**Initial Term**" of the Lease shall be twenty-five (25) years, expiring on the last day of the month in which the twenty-fifth anniversary of the Commencement Date occurs. Lessee shall provide the Lessor written notice of the Commencement Date at least ten (10) business days prior to Lessee's commencing modification of its Antenna Facilities for use of the PSERN System.

Lessee shall have the right to extend the term of the Lease for three (3) additional periods of five (5) years each (each an "**Extension Term**") subject to the following terms and conditions:

(a) That at the time of the exercise of such right, as well as at the time of the beginning of the Extension Term, Lessee shall not be in default in the observance or performance of any of the material terms, covenants or conditions of this Lease with respect to a matter as to which written notice of default has been given and which has not been remedied within the applicable cure period set forth in this Lease.

(b) That such Extension Term shall be upon the same terms, covenants and conditions as in this Lease.

(c) Each Extension Term shall be exercised automatically as long as Lessee does not deliver to Lessor a written notice of termination at least sixty (60) days prior to the end of the Initial Term or the end of the applicable Extension Term.

4. **Subletting and Assignment.** Section 5, Subletting and Assignment, of the Lease is hereby deleted in its entirety and replaced with the following:

5. **Subletting and Assignment:**

A. Upon Lessor's written consent, which shall not be unreasonably withheld, delayed or conditioned, Lessee may assign this Lease, in part or in whole, including its right to renew, to any person or business entity that assumes Lessee's leasehold interest. Lessee may grant or deny any sublease of the Premises, in part or in whole, without Lessor's prior written consent provided that Lessee shall remit to Lessor fifty percent (50%) of any net rents received from any sublease, excluding monies obtained from such sublessee to reimburse Lessee for its costs incurred to accommodate such sublease, including but not limited to leasing, permitting and construction costs of the Premises and Antenna Facilities being sublet.

B. Lessor acknowledges that Lessee and other municipalities participating in the PSERN System intend to establish a new governmental non-profit entity that will eventually own and operate the PSERN System. Notwithstanding anything in this Lease to the contrary, Lessee may assign its interest in this Lease, without the Lessor's consent, to that governmental non-profit entity or to any entity existing now or in the future that will be responsible for the operation,

maintenance, management, updating and upgrade or replacement of the PSERN System as authorized by law.

C. In the event of an assignment, the assignee shall assume all liability of the assignor and Lessee will be relieved of all future performance, liabilities and obligations under this Lease to the extent of such assignment.

5. **Notice.** Section 9, Notices, of the Lease is hereby deleted in its entirety and replaced with the following:

9. **Notices:** Wherever in this Lease written notices are to be given or made, they will be sent by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered, addressed to the Party as follows, unless a different address shall be designated in writing and delivered to the other Party:

Lessor: Allen D. Church, Fire Chief/Administrator
South King Fire & Rescue
31617 First Avenue South
Federal Way, WA 98003

Lessee: King County Facilities Management Division
Real Estate Services
Attention: Leasing Supervisor
Re: Federal Way PSERN Lease
500 Fourth Avenue, Suite 830
Seattle, WA 98104

With a copy to: King County Facilities Management Division
Director's Office
Attention: Gail Houser
RE: Federal Way PSERN Lease
500 Fourth Avenue, Suite 800
Seattle, WA 98104

With a copy to: King County Department of Information Technology
Puget Sound Emergency Radio Network
Attention: Marlin Blizinsky
RE: Federal Way PSERN Lease
401 Fifth Avenue, Suite 600
Seattle, WA 98104

Each Party shall appoint a manager to have responsibility for activities carried out under this Lease, and to resolve any disputes that may arise between the Parties, which shall be resolved in accordance with the terms of Section 20, Dispute Resolution, of the of the General Terms and Conditions attached to this Lease.

6. **Representations and Warranties.** The Lease is hereby amended to include an additional Section 12 as follows:

12. **Representations and Warranties:** Lessor represents, warrants and agrees that: (i) Lessor solely owns the Property as a legal lot in fee simple and has the full right, power and authority to grant this Lease to Lessee; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Lessee's rights under this Lease; and (iii) Lessor's execution and performance of this Lease will not violate any laws, covenants or the provisions of any mortgage, lease or other agreement binding on Lessor.
7. **Maintenance.** Section 5, Maintenance, of the General Terms and Conditions attached to the Lease is hereby amended to include an additional paragraph as follows:

Lessor shall maintain the Property, including access to the Premises, in good repair during the term of this Lease. Except as expressly set forth in this Lease, Lessor shall not maintain, repair or otherwise touch or interfere with Lessee's Antenna Facilities without Lessee's prior consent; provided that, in the event of an emergency posing an imminent threat of bodily injury or property damage, Lessor may take action necessary to abate the threat.

8. **Indemnification.** Section 8, Indemnity and Hold Harmless, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

8. **Indemnity and Hold Harmless:**

A. Lessee agrees to indemnify and hold Lessor harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessor, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, causes of action, judgments, damages, costs, attorney fees, government orders, penalties, or other requirements (hereafter "**Claims**"), including costs of defense thereof for injury to persons, death, or property damage that is caused by or arises out of Lessee's exercise of rights and privileges granted by this Lease, except to the extent of the Lessor's negligence.

B. Lessor agrees to indemnify and hold Lessee harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessor agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Lessee, its appointed and elected officials, and employees from and against liability for all Claims, including costs of defense thereof for injury to persons, death, or property damage which is caused by or arises out of Lessor's exercise of rights and privileges granted by this Lease, except to the extent of the Lessee's negligence.

C. Where such Claims result from the concurrent negligence of the Parties, the provisions provided in this Section shall be valid and enforceable only to the extent of each Party's negligence.

D. Each of the Parties agrees that its obligations under this Section 8 extend to any Claim brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such Claims under the industrial insurance provisions of Title 51 RCW.

E. In the event that any of the Parties incurs any judgment, award, and/or cost arising therefrom, including attorney fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's negligence.

F. The provisions of this Section 8 do not apply to Claims that are subject to Section 11, Hazardous Substances, of the General Terms and Conditions attached to the Lease.

9. **Insurance.** Sections 9 and 10, Insurance and Mutual Waiver of Subrogation, of the General Terms and Conditions attached to the Lease are hereby deleted in their entirety and replaced with the following:

9. **Insurance:**

A. Lessee maintains a fully funded Self-Insurance program for the protection and handling of the Lessee's liabilities including injuries to persons and damage to property.

B. Lessor acknowledges, agrees and understands that Lessee is self-funded for all of its liability exposures. Lessee agrees, at its own expense, to maintain, through its fully funded Self-Insurance program, coverage for all of its liability exposures for the Lease. Lessee agrees to provide Lessor with at least thirty (30) days prior written notice of any material change in Lessee's self-funded insurance program and will provide Lessor with a letter of self-insurance as adequate proof of coverage. Lessor further acknowledges, agrees and understands that Lessee does not purchase Commercial General Liability insurance and is a self-insured governmental entity; therefore Lessee does not have the ability to name Lessor as an additional insured.

C. If Lessor is not a governmental agency which maintains a fully funded Self-Insurance program in accordance with applicable law, Lessor will maintain Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, based on ISO Form CG 00 01 or equivalent, and will include Lessee as an additional insured with respect to claims arising out of or related to the Lease.

D. Lessor shall carry "All Risk" property insurance in an amount equal to the full replacement value of its improvements on the Property.

E. Lessee shall maintain "All Risk" property insurance in an amount equal to the full replacement value of all its improvements and personal property located on the Premises or shall self-insure improvements and personal property on the Premises.

10. **Mutual Waiver of Subrogation:** Notwithstanding any language to the contrary contained in the Lease, Lessor and Lessee agree that they shall not make a claim against or seek recovery from the other for any loss or damage to their property, or the property of others, resulting from fire or other hazards covered by fire insurance or required to be covered under the Lease, and each hereby releases the other from any such claim or liability regardless of the cause of such loss.

10. **Non-Discrimination.** Section 13, Anti-Discrimination, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

13. **Non-Discrimination:** Lessee and Lessor, for themselves, their successors, and assigns as a part of the consideration hereof, do hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of federal, state or local laws applicable to the Property, including, without limitation, Chapter 49.60 RCW. Lessee and Lessor 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. Lessee and Lessor 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 Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part, of this Lease and may result in ineligibility for further agreements between the Parties.

11. **Default.** Subsections 16.E, Lessor's Breach, and 16.F, Lessee's Breach, under Early Termination of the General Terms and Conditions attached to the Lease are hereby deleted in their entirety and replaced with the following:

E. **Lessor's Breach:** If Lessor should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessee shall have the right, at its option, in addition to and not exclusive of any other remedy Lessee may have by operation of law, to remedy Lessor's failure to perform or terminate this Lease upon written notice to Lessor. In such event(s): 1) Lessor shall be responsible for any costs incurred by Lessee in remedying Lessor's default, and/or 2) Lessee shall only be responsible for Rent and utilities through the date of termination.

F. **Lessee's Breach:** If Lessee should fail to remedy any default in the keeping of any term, covenant or condition herein with all reasonable dispatch, within a reasonable period of time no sooner than forty-five (45) days after receipt of written notice within which time frame said default has not been cured, then in any of such event(s), Lessor shall have the right, at its option, in addition to, and not exclusive of, any other remedy Lessor may have by operation of law, terminate this Lease upon written notice to Lessee. In such event(s) Lessee shall only be responsible for Rent and utilities through the date of termination.

12. **Termination.** Section 16, Early Termination, of the General Terms and Conditions attached to the Lease is hereby amended to include an additional paragraph as follows:

H. **Lessee's Additional Termination Rights:** Lessee retains the right to terminate this Lease for any reason whatsoever upon sixty (60) days written notice to Lessor. Lessee also retains the right to terminate this Lease upon thirty (30) days written notice to Lessor if Lessee or Lessee's vendor of the PSERN System determines that, for design, interference, environmental, economic or title reasons, the Premises are not necessary or suitable for the operation of the PSERN System or the use described in this Lease.

13. **Removal of Personal Property by Lessee and Surrender of Premises.** The last sentence of Section 4.A, Lessee Improvements, of the General Terms and Conditions attached to the Lease is hereby deleted in its entirety. In addition, Section 17, Surrender of Premises, of the General Terms and Conditions of the Lease is hereby deleted in its entirety and replaced with the following:

17. **Removal of Personal Property by Lessee:**

A. All portions of the Antenna Facilities brought onto the Property by Lessee will be and remain Lessee's personal property during the term of this Lease. During the term of the Lease and upon termination, Lessee shall have the right to remove some or all of its personal property, whether or not attached to the Premises, provided that such may be removed without serious damage

to the Property. All damage to the Property caused by removal of Lessee's personal property shall be promptly restored or repaired by Lessee. All personal property not so removed within forty-five (45) days after the expiration or earlier termination of this Lease shall be deemed abandoned by Lessee.

B. Upon the expiration or early termination of this Lease, Lessee shall restore the Premises to the condition that existed prior to Lessee's occupancy, reasonable wear and tear excepted, including removal of Lessee's personal property/equipment, but excluding the replacement of trees or other landscaping that was removed during the construction process. This work shall be done at Lessee's sole expense and to the reasonable satisfaction of Lessor.

C. Notwithstanding anything in this Lease to the contrary, upon the expiration or earlier termination of this Lease, Lessee at its option may leave on the Property any service buildings, foundations, roads and underground utility cables and conduit installed by or at Lessee's direction, in which case Lessor shall assume ownership thereof without the need for any additional documentation, and such facilities will become part of Lessor's Property.

14. **Dispute Resolution.** Section 20, Arbitration, of the General terms and Conditions attached to the Lease is hereby deleted in its entirety and replaced with the following:

20. **Dispute Resolution.**

A. In the event of a dispute between the Lessor and Lessee arising by reason of this Lease, the dispute shall first be referred to managers designated by Lessor and Lessee to have oversight over the administration of this Lease. The officers or managers shall meet within a reasonable time, not later than five (5) calendar days after either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties may agree to refer the matter to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the Parties.

C. If the Parties fail to achieve a resolution of the dispute through meeting or mediation within the cure periods provided for in Subsections 16.E and 16.F, either Party may seek any and all remedies at law against the other Party for default or breach of this Lease.

15. **Memorandum of Lease.** Lessor agrees to sign a short form Memorandum of Lease evidencing the Lease, as amended, that Lessee may record at Lessee's expense.

16. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Second Amendment.

17. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed of the date and year opposite their signature blocks.

Lessor:
SOUTH KING FIRE AND RESCUE

DATED: _____

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument, and that the seal affixed is the seal of _____ County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first written above.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My commission expires: _____

DATED: _____

Lessee:
KING COUNTY,
a political subdivision of the State of Washington

DATED: _____

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the individual(s) that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said individual(s), for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument, and that the seal affixed is the seal of said County.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first written above.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

DATED: _____

Approved as to form:

Busch Law Firm PLLC

EXHIBIT #1-A
(Supplement to Exhibit #1 of the Lease)
(Description of Premises and Antenna Facilities)

Installation of 4 microwave dishes and 4 LMR "whip" antennas on the existing 260' tower; supporting equipment installed within the existing equipment shelter.



