



**Legislative Department
Seattle City Council
Memorandum**

Date: September 14, 2011
To: Parks and Seattle Center Committee Members
From: Norm Schwab, Council Central Staff
Subject: C.B. 117285 – KEXP Lease at Seattle Center Northwest Rooms

Introduction

C.B. 117285 authorizes a lease agreement with Friends of KEXP to renovate and use portions of the Seattle Center’s Northwest Rooms (San Juan, Olympic and Rainier Rooms) as KEXP’s broadcast and production studios and offices and for performance spaces both inside the facility and in the Northwest Rooms outdoor courtyard. The earliest the lease would commence would be November 1, 2013; however, the lease provides for two possible one-year extensions to the commencement date. KEXP is currently in the process of raising funds for the improvements. The term of the lease is for 10 years, with 4 five-year extensions at the option of KEXP, for a total of 30 years. The September 15th Parks and Seattle Center Committee briefing will have presentations from both Seattle Center and KEXP about the proposed lease as well as discussion of potential issues by Councilmembers. The Committee is scheduled to meet again next week on September 22nd to discuss and possibly vote on this lease and amendments, if any. This memorandum provides a summary of the proposed contract and a discussion of certain provisions.

Key Terms of Proposed Lease

Item	Terms
<i>Premises, Permitted Uses, and Subleasing</i>	<ul style="list-style-type: none">• 27,960 square feet of space in the San Juan, Olympic and Rainier Rooms, including adjacent entryway, and up to 800 square feet of surface courtyard areas identified in Exhibit 2 as the “Stage Area” (<i>Section 1.2</i>)• Permitted uses for a non-profit radio station broadcast facility and music and arts organization include: broadcast and production studios, related uses such as administrative and business offices, programs, fundraising to support programs and operations, performance spaces, café featuring live or recorded music and occasional dancing, and incidental retails sales. (<i>Section 2.3</i>)• Short-term sublease or license up to 25% of premises for 30 days or less that support KEXP’s operation and that are consistent with Seattle Center’s overall mission without Seattle Center Director approval. (<i>Section 2.</i>)• Long-term sublease or license portions of premises for uses that are compatible with Seattle Center’s over-all mission, without restriction to amount of space or specified uses, subject to Seattle Center Director’s prior approval (which shall not be unreasonably withheld). (<i>Section 20</i>)

Item	Terms
<i>KEXP Initial Improvements</i>	<ul style="list-style-type: none"> • “New Stage” and landscape and hardscape improvements to adjacent areas • New roof • New grand entrance and signage • Added storefront glazing, new exterior doors, added windows, and new exterior paint • Structural improvement needed to support interior tenant improvements and roof top loads • Asbestos removal • New bathrooms • Building system improvements • Tenant improvements (office and conference spaces, sound recording and technical spaces, lobby, interior performance spaces) • Office equipment, radio and production equipment, signage and digital audio archive. <p><i>(Section 11.1)</i></p>
<i>City Initial Improvements</i>	<ul style="list-style-type: none"> • Up to \$250,000 to customize premises for KEXP: <ul style="list-style-type: none"> ○ Acquisition and installation of emergency generator, transfer switch, and generator fuel tank ○ Via DoIT – fiber optic cable connections ○ Connection of KEXP’s existing radio transmitter facility to City owned and operated backup generator at 18th Avenue and East Madison Street via existing KUOW owned switch <p><i>(Section 11.2)</i></p>
<i>Commencement Date Conditions and Extensions</i>	<ul style="list-style-type: none"> • Commencement date of November 1, 2013 • Two One-Year Extension Options, with \$31,250 payment per option • Conditions for commencement relating to Initial Improvements: <ul style="list-style-type: none"> ○ DPD has issued permit ○ City Budget Director and Seattle Center Director sign-off that KEXP has sufficient funds to complete ○ City and KEXP have executed construction agreement <p><i>(Sections 1.5, 1.8 and 3.2)</i></p>
<i>Rent</i>	<ul style="list-style-type: none"> • Annual Rent = \$290,000; \$62,500 in cash, \$155,000 in-kind on-air spots and \$43,000 in-kind top-of-hour tags (Cash rent equals approximately \$2/square foot; Combined cash and in-kind rent equals approximately \$10/square foot) • Rent increase after Year 5 of 2% per year • 15% of subleasing rents to other than non-profits (or alternative in-kind as agreed upon) excluding 501(c)(3) subtenants <p><i>(Sections 1.7 and 4)</i></p>

Item	Terms
Joint Programming	<ul style="list-style-type: none"> • KEXP may produce and co-brand with Seattle Center a free busking program in commons areas to create incidental encounters of arts and entertainment • KEXP and Seattle Center Productions to work cooperatively to develop and implement annual joint programming plan. <p><i>(Section 15)</i></p>
Public Benefits	<ul style="list-style-type: none"> • Initial Improvements • Seattle Center’s Homepage Links • Use of “New Stage” by Folk Life, Bite of Seattle, Giant Magnet, Bumbershoot, and other Seattle Center events • Power outage support space for emergency command center • Incidental performance art experiences • Free public access • Community educational resources such as instructional space and work space for students, volunteers and musicians • Partnership building with Seattle Public Schools, Seattle Public Library, Seattle Channel, Vera Project, University of Washington, EMP and Seattle: City of Music Commission <p><i>(Section 19)</i></p>
Other	<ul style="list-style-type: none"> • Grants exclusive radio rights to KEXP and no other radio station • Five parking passes for Seattle Center parking facilities at no charge • Up to \$5,000 annual maintenance of new emergency generator systems by Seattle Center staff • Up to \$3,000 of Seattle Center staff time annually for routine repair and maintenance of mechanical, plumbing, wastewater, electrical or similar systems on Premises. <p><i>(Sections 8.5, 9.5, 12.3)</i></p>

Discussion

Below is additional discussion and detailed information on unique aspects of the proposed KEXP lease.

1. **Composition of Rent: Cash and In-Kind Services (Section 4)**

The lease is structured such that the annual rent of \$290,500 is split between cash (21.5%) and in-kind services (78.5%) recognizing that KEXP offers a unique partnership opportunity and ability to help market Seattle Center activities. Unlike other Seattle Center tenants, KEXP through its on-air and online broadcasting capabilities provides a venue in which Seattle Center may advertise its events and its existence as a cultural gathering spot to a wide ranging audience. Section 4 of the lease includes a rent table that continues this split between cash and in-kind rent at the same proportion over the 30 year term, with 2 percent annual increases in total rent after the first five-years. The inflator is less than the average inflation rate over the

last 20 years of about 3 percent. While the increment appears to be small, over time it has considerable implications for rent due to compounding. The lease allows KEXP to occupy and develop the Seattle Center without significantly increasing its current cash rent.

Seattle Center has a multifaceted marketing and advertising effort that is currently paid for with a limited amount of cash and a variety of leveraged opportunities including in-kind contributions such as sponsorships, use of Seattle Center facilities, and access to promotional tickets at Seattle Center events. Seattle Center has reduced its budget for advertising and marketing due to recent City budget cuts. In 2010 Seattle Center spent about \$160,000 in non-event advertising compared with an estimated \$82,200 to be spent in 2011. The majority of expenses were with the Seattle Weekly. The addition of \$228,000 per year of in-kind advertising from KEXP will significantly increase Seattle Center's non-event marketing. The above amounts do not account for Seattle Center's event marketing, which is reimbursed by benefiting organizations.

KEXP will pay in cash rent of about \$2/square foot. When combined with the in-kind advertising/marketing, the rent totals about \$10/square foot. The cash rent in the proposed lease is low compared to both Seattle Center's goals for leasing space to non-profits at \$6/square foot and in comparison to most of the other non-profits housed at Seattle Center. However, the combined cash and in-kind rent is above that level. While, the proposed lease allows KEXP to grow from its current operations into expanded space at Seattle Center without increasing its current cash outlay for rent, the lease does not help Seattle Center move away from reliance on General Fund support for its overall operations. The cash rent leaves Seattle Center with a projected slight loss in annual revenue from current rentals of the Northwest Rooms for dances, parties, auctions, fundraisers, exams, trade shows, conventions, and private meetings. The lease to KEXP, however, is intended to help revitalize and energize Seattle Center's arts and music activities.

2. Long-Term Assignment and Sublease (Section 20)

The proposed lease allows KEXP to sublease portions (no limit established on the amount of space) of the premises for a wide range of uses that "are compatible with Seattle Center's overall mission, subject to the Director's prior written approval, which shall not be unreasonably withheld." The lease provides no specific guidance or factors to consider as to what uses are considered acceptable. If KEXP and the Director are unable to reach agreement, then a litigation process could determine the outcome. The lease language on long-term subleasing is similar to several other Seattle Center leases, except the recently approved lease with the for-profit Center Art, LLC., which requires that in addition to Director approval the City Council must be given prior written notice on proposed a change in use. However, the open-ended provision for the amount of subleasing is dissimilar from other Seattle Center leases.

KEXP will be roughly quadrupling the amount of its space when it moves to Seattle Center and may need the flexibility to lease space to support the costs of its operations rather than for direct use, especially during the initial term of the lease. During lease negotiations, KEXP expressed a strong desire for a high degree of flexibility in the long-term subleasing provisions. The Seattle Center Director believes that the general terms on long-term subleasing are

workable. If the Council wishes to have further guidance or restrictions on subleasing in the proposed lease, Seattle Center and KEXP would need to return to negotiations.

3. Review of Fund Raising and Business Plans (Section 1.5 – Commencement Conditions)

Section 1.5 of the proposed lease requires that “KEXP has demonstrated to the reasonable satisfaction of the City’s Budget Director and the [Seattle Center] Director that KEXP has sufficient funds to complete the Initial Improvements” to the Seattle Center Northwest Rooms. This is a condition (with others) for KEXP to commence its lease on November 1, 2013 and begin construction. The proposed lease, however, is silent on the City’s ability to review KEXP’s business plan and fundraising plan as precedents to the Budget Director’s and Seattle Center Director’s review of KEXP’s finances and construction plan. The City has required review of fundraising and business plans for other non-profit agencies with which it has partnered.

An option for Council consideration is to require KEXP to submit a report to the City’s Budget Director and Seattle Center Director on its business and fundraising plans and efforts to date well in advance of the lease commencement date. This would provide for an interim check-in point to measure KEXP’s progress. Establishing such a milestone will help KEXP along its path to successfully funding and executing the improvements anticipated in Section 11 of the proposed lease. It would give the City an earlier opportunity to assess KEXP’s plans and efforts and more time to arrange for alternate uses for the Northwest Room in the event that KEXP proceeds more slowly than planned. The date for submittal of the report could be set for November 2012, a year in advance of the commencement date for the lease. If KEXP exercises its lease commencement options under Section 3.2, the report submittal date could coincide with the notice date, which is 18 months in advance of the revised commencement date.