

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

DATE SUBMITTED: September 14, 2022	PREPARED BY: Liz Cupples
Meeting Date Requested: September 27, 2022	PRESENTED BY: Liz Cupples
ITEM: (Select One) <input checked="" type="checkbox"/> Consent Agenda <input type="checkbox"/> Brought Before the Board Time needed:	
SUBJECT: Hardsburg Tower Waiver of Subleasing Requirement for Utility Providers	
FISCAL IMPACT: No impact	
BACKGROUND: We have a contract with Harder Farms, Resolution 2005-066 and amended Resolution 2020-003 which states each entity (sub-tenant) Franklin County agrees to lease premises on Kahlotus tower, we are to collect \$10,000 annually from the entity and pass this payment onto Harder Farms. With our recent sub-tenant project build-out with T-Mobile, it was determined they would need a utility (internet service provider) provider on Kahlotus Tower. T-Mobile contracted with StarTouch for this service. StarTouch reached out to Harder Farms and negotiated an agreement to waive the collections of \$10,000. Gunnerson Consulting created the attached Hardsburg Tower Waiver of Subleasing Requirement for Utility Providers so there would be an agreement between Landlord (Harder Farms) and Tenant (Franklin County) stating Tenant will not collect \$10,000 from utility providers, as defined in the agreement.	
RECOMMENDATION: With consultation from Gunnerson Consulting, Information Services recommends the approval of "Hardsburg Tower Waiver of Subleasing Requirement for Utility Providers" agreement with Harder Farms, Inc.	
COORDINATION: Contract has been reviewed by the following: Liz Cupples – Information Services Jen Johnson – Chief Civil DPA Brett Reall, Bryon Gunnerson – Gunnerson Consulting	
ATTACHMENTS: (Documents you are submitting to the Board) Hardsburg Tower Waiver of Subleasing Requirement for Utility Providers Resolution	
HANDLING / ROUTING: (Once document is fully executed, it will be imported into Document Manager. Please list <u>name(s)</u> of parties that will need a pdf) Information Services	

I certify the above information is accurate and complete.

Liz Cupples

Liz Cupples, Director

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARD OF COUNTY COMMISSIONERS, FRANKLIN COUNTY, WASHINGTON

RE: AUTHORIZING APPROVAL OF HARDERBURG TOWER WAIVER OF SUBLEASING REQUIREMENT FOR UTILITY PROVIDERS AGREEMENT BETWEEN FRANKLIN COUNTY A MUNICIPAL COOPERATION OF THE STATE OF WASHINGTON AND HARDER FARMS, INC., A WASHINGTON CORPORATION.

WHEREAS, Franklin County entered into Hardersburg Tower Site Licenses Agreement (Resolution 2005-066) then amended Hardersburg Tower First Amendment to Site Licenses Agreement (Resolution 2020-003); and

WHEREAS, the amended agreement, Section 5(d) references Tenant (Franklin County) will collect ten thousand dollars from any sub-tenants for leased premises on the Tower and submit payment to Landlord (Harder Farms); and

WHEREAS, Harder Farms has elected to waive the collection of ten thousand dollars for utility providers; and

WHEREAS, Franklin County desires to acknowledge Harder Farms waiver of Tenant's Colocation Rent requirement within the lease as it applies to utility providers; and

WHEREAS, pursuant to R.C.W. 36.0 1.010 and R.C.W. 36.32. 120 the legislative authority of each county is authorized to enter into contracts on behalf of the County and ensure the care of county property and management of county funds and business; and

WHEREAS, the Board of Franklin County Commissioners constitutes the legislative authority of Franklin County and desires to enter into the attached agreement as being in the best interest of Franklin County; and

NOW, THEREFORE, BE IT RESOLVED the Franklin County Board of Commissioners hereby approves of the attached Hardersburg Tower Waiver of Subleasing Requirement for Utility Providers agreement; and

BE IT FURTHER RESOLVED, the Chairman of the Board of County Commissioners is hereby authorized to sign the attached referenced document titled Hardersburg Tower Waiver of Subleasing Requirement for Utility Providers between Franklin County and Harder Farms, Inc.

APPROVED this _____ day of _____ 2022.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON

Chair

Attest:

Chair Pro Tem

Clerk to the Board

Member

HARDERSBURG TOWER

WAIVER OF SUBLEASING REQUIREMENTS FOR UTILITY PROVIDERS

This WAIVER OF SUBLEASING REQUIREMENTS FOR UTILITY PROVIDERS (the “**Waiver**”) is effective as the latter date of execution by both parties hereto (the “**Effective Date**”), by and between HARDER FARMS, INC., a Washington corporation (“**Landlord**”) and FRANKLIN COUNTY, a municipal corporation of the State of Washington (“**Tenant**”) (individually referred to as a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, Landlord and Tenant entered into that certain “*Hardersburg Tower Site Lease Agreement*” dated January 21, 2005 (“**Original Lease**”) as amended by that certain “*Hardersburg Tower First Amendment to Site Lease Agreement*” dated January 1, 2020 (“**First Amendment**”, and collectively, the “**Lease**”), whereby Landlord leased to Tenant a certain portion of real property as defined in the Lease for the construction of a radio tower (“**Tower**”), together with a non-exclusive easement for reasonable access thereto and for adequate utility services; and

WHEREAS, Section 5(d) of the Lease, as amended, requires that “*Tenant may sublease all or any portion of the Leased Premises and any time, provided that... Tenant will collect from such Sub-tenant, and pay to Landlord an amount equal to Ten Thousand and No/100 Dollars (“Colocation Rent”)...*”; and

WHEREAS, due to the remote location of the Tower, one of Tenant’s sub-tenants requires utilities provided by microwave, requiring that such utility provider enter into a Sub-tenant agreement with Tenant; and

WHEREAS, Landlord and Startouch, Inc. (“**Startouch**”) have already entered into that certain “*Lease Agreement for Broadband Equipment*” dated April 19, 2020 (“**Startouch Agreement**”) pursuant to which Landlord receives consideration for Startouch’s presence on the Property; and

WHEREAS, Landlord and Tenant desire to acknowledge Landlord’s waiver of Tenant’s Colocation Rent requirement within the Lease as it applies to utility providers.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Capitalized Terms. Any capitalized terms not defined in this Waiver shall have the meanings ascribed to them in the Lease.

2. Sublease; Colocation. Landlord hereby waives the requirements of Section 5 of the Lease, as amended by Section 4 of the First Amendment specifically as follows: providers of utilities to Sub-tenants are not subject to the payment of Colocation Rent, provided that (i) such utility providers are providing service only to Tenant, and/or a Sub-tenant of Tenant, and (ii) such utility providers are not providing utility services to other parties not located on the Tower.

3. Startouch. In addition to Section 2 above, the Parties agree that Startouch is permitted to colocate on the tower as a Sub-tenant pursuant to the Startouch Agreement. So long as the Startouch is not terminated, Startouch shall be permitted on the Property as a Sub-tenant of Tenant without Tenant being subject to the Colocation Rent obligations in the Lease.

4. Miscellaneous

4.1. Time of the Essence. Time is of the essence in each and every provision of this Waiver.

4.2. Entire Agreement. The Lease and this Waiver constitute the entire agreement of the Parties and may not be modified except in writing and signed by both Parties.

4.3. Invalidity of Particular Provision. If any term or provision of this Waiver, or the application of such term or provision to any person or circumstance, to any extent, is invalid or unenforceable, the remainder of this Waiver, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected and each term and provision of this Waiver will be valid and be enforced to the fullest extent permitted by law.

4.4. Counterparts. This Waiver may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Waiver by electronic means such as, and without limitation to, DocuSign, and in .pdf or similar format. Each of the Parties agrees that the delivery of the Waiver by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Waiver by all Parties to the same extent as an original signature.

4.5. Legal Representation. The Parties warrant and represent to each other that they have had representation by legal counsel or have had the opportunity to be represented by legal counsel during all stages in the negotiation of this Waiver. The Parties further agree that they have participated in the negotiating and drafting of this Waiver and stipulate that this Waiver shall not be construed more favorably with respect to either Party.

- 4.6. Submission. The submission of a draft of this Waiver by either Party to the other shall not constitute an offer, and neither Party shall be bound by the terms of this Waiver unless and until this Waiver is fully executed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Waiver of Subleasing Requirements for Utility Providers as of the date last signed below.

LANDLORD:

HARDER FARMS, INC., a Washington corporation.

By: William G Harder
Name: William G Harder, Sr.
Title: Owner
Date: 9/3/22

TENANT:

FRANKLIN COUNTY, a municipal corporation of the State of Washington

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:


PROSECUTING ATTORNEY'S OFFICE