

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

RESOLUTION

MOTION: _____

RESOLUTION NO. 09-06-____
OFFICIAL COMMISSION MEETING
JUNE 4, 2009

SECOND: _____

RE: LEASE OF TELEGRAPH ROAD PROPERTIES LAND FOR PARKING

WHEREAS, the Potomac and Rappahannock Transportation Commission (PRTC) has been leasing unimproved property owned by Telegraph Road Properties near the PRTC Transit Center for temporary commuter parking (“the subject property”) while a permanent commuter parking lot under development is awaited; and

WHEREAS, management has concluded that the subject property is well suited for storage of PRTC’s contingency bus fleet when the subject property is no longer needed for temporary commuter parking; and

WHEREAS, Telegraph Road Properties is amenable to PRTC continuing to lease the subject property for this purpose; and

WHEREAS, a proposed lease agreement has been negotiated providing for PRTC’s use of the subject property for one year with ten one-year options that PRTC can exercise at its sole discretion, and a graduated monthly rental of \$1,250 per month in year one, \$1,750 in year two, \$2,250 in year three, and three (3) percent per year thereafter; and

WHEREAS, management has recommended that the lease as proposed be authorized for execution and the Potomac and Rappahannock Transportation Commission is in accord.

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission does hereby authorize the execution of the lease as proposed.

BE IT FURTHER RESOLVED that the Commission also authorizes the Executive Director to exercise the one year options without the need for further Commission action if, in management’s judgment, the exercise of said options is in the Commission’s interest, subject to the availability of funds.

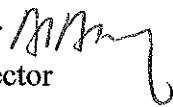


Potomac and Rappahannock
Transportation Commission

14700 Potomac Mills Road
Woodbridge, VA 22192

June 4, 2009

TO: Chairman May and Commissioners

FROM: Alfred H. Harf 
Executive Director

RE: Lease of Telegraph Road Properties Land for Parking

Recommendation:

Authorize the execution of a property lease agreement with Telegraph Road Properties providing for PRTC's use of upland acreage east of Telegraph Road for parking (hereinafter referred to as "the subject property").

Background:

With the Commission's authorization, PRTC has leased the subject property for the past 21 months for use as a temporary commuter park-ride lot. A temporary commuter parking lot was necessary because the lot formerly used by commuters had to be converted to an employee parking lot to allow the expansion of the bus yard, and the planned permanent replacement lot across the street from the Transit Center could not be completed soon enough to avoid this. While commuters will cease using the temporary lot once the permanent replacement lot is completed (expected by the end of this calendar year), management desires to continue leasing the subject property thereafter for storage of PRTC's contingency bus fleet.

The contingency bus fleet is now stored on unimproved upland property owned by VDOT between Telegraph Road and I-95 ("the VDOT property"), which cannot be seen from Telegraph Road or Potomac Mills Road when there is foliage on trees between the VDOT property from the subject property. VDOT has graciously allowed PRTC to use the VDOT property for bus storage, but it has done so only on a short-term basis because it cannot be certain that it won't need the VDOT property for its own purposes longer-term. For both of these reasons, the subject property is preferred for storing PRTC's contingency bus fleet.

The proposed lease agreement has a one-year base period and ten, one-year options that PRTC can exercise at its sole discretion. PRTC management sought an agreement structured in this fashion because PRTC's need for the subject property has an uncertain duration, dependent

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on how long it will take to complete the implementation of a new, westerly bus maintenance facility. When the westerly maintenance facility is completed, there will be ample space for the secure storage of the contingency bus fleet on PRTC-owned property.

The proposed lease agreement (attached) calls for a graduated set of increases to the monthly rent as consideration for PRTC's longer-term occupancy. At the present time, the rent is \$1,000 per month, and this would increase to \$1,250 per month in year one of the new lease, \$1,750 in year two, \$2,250 in year three, and three (3) percent per year thereafter. Management believes these increases are reasonable, and will account for them in PRTC's annual budget preparations. The existing two-year lease expires at the end of August 2009, so the new lease would commence on September 1, 2009.

Fiscal Impact:

The proposed FY 2010 budget provides for the lease of the subject property at its current rate, so the new lease entails an expense that is \$2,500 more than budgeted for the year. Management would cover this nominal unfavorable variance at mid-year with favorable variances elsewhere in the budget.

Attachment: As stated

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of the _____ day of _____, 2009, by and between **THE POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**, 14700 Potomac Mills Road, Woodbridge, Virginia 22192 (hereinafter referred to as "PRTC"), and **TELEGRAPH ROAD PROPERTIES LLC**, a Virginia limited liability company, 13720 Dabney Road, Woodbridge, Virginia 22121 (hereinafter referred to as "Telegraph Road Properties").

WITNESSETH:

WHEREAS, a significant number of commuters park their cars at PRTC Headquarters located at 14700 Potomac Mills Road; and

WHEREAS, by a Deed recorded as Instrument Number 200608170121138 among the land records of Prince William County, Telegraph Road Properties acquired an approximately 2.1 acre parcel on the east side of Telegraph Road, at its intersection with Potomac Mills Road, in close proximity to PRTC Headquarters, which property is identified as Prince William County GPIN 8291-75-7343, with the address of 14775 Telegraph Road, which Telegraph Road Properties is willing to lease to the PRTC for the location of commuter parking spaces; and

WHEREAS, the parties desire to enter into this lease for the consideration and under the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, PRTC and Telegraph Road Properties agree to the following terms:

LEASE TERMS

1. Leasehold Area. The parking area delineated on Exhibit A attached hereto is hereby leased to PRTC and shall be available for parking for commuters (hereafter referred to as the "property"). PRTC has improved the property by clearing it of vegetation, performing minor earth moving to flatten it further, and placing crushed stone as PRTC has done to other temporary parking lots, to create a firmer surface, and adding temporary lighting, security cameras, and "parking blocks" as PRTC has deemed necessary for safety and security purposes. All such improvements have been done at PRTC's sole expense.

2. Lease Term. This Lease shall be for an initial term of three (3) years, which then may be extended by up to ten (10) additional one (1) year extension terms provided that PRTC is not in default under the Lease as further provided herein. This Lease may be terminated at any time (including during any Extension Term) by Telegraph Road Properties provided that it provides sixty (60) days advance written notice to PRTC of the termination. The Lease commencement date shall be _____, 2009.

3. Extension Terms.

(a) Subject to the satisfaction of the conditions precedent set forth in Section (b) below, PRTC shall have the right, at its option, to extend the term of this Lease for up to ten (10) successive additional periods of one (1) year each (the "Extension Terms"). Such extension option shall be exercisable by PRTC giving written notice to Telegraph Road Properties of the exercise of such option only during the three (3) month period that is at least six (6) months, but not more than nine (9) months, prior to the expiration of the then current term of the Lease. Upon the exercise of such extension option, the expiration date of the term of this Lease automatically shall be extended for the length of such Extension Term. Such Extension Term shall be upon the same terms, covenants and conditions set forth in this Lease governing the initial term, except that the Rent for each Extension Term shall increase by the amount of three percent (3%) per year from the immediately preceding annual rental rate for each year of each Extension Term. In the event that PRTC shall fail to exercise the extension option granted hereunder within the time periods prescribed and/or if all of the conditions precedent to the extension option set forth in Section 3(b) below have not been satisfied, then such extension option and any and all subsequent extension options that PRTC may otherwise have shall automatically expire and be absolutely void and of no force or effect.

(b) The extension option granted to PRTC in Section 3(a) above shall be void and of no force or effect unless, at the time specified in Section 3(a) above for PRTC to exercise the options, each and every one of the following conditions have been fully satisfied:

- (1) This Lease shall be in full force and effect;
- (2) PRTC shall be in possession of the Leasehold Area and shall be regularly conducting its normal business operations on the Leasehold area; and

(3) PRTC shall not be in default (beyond any grace period granted in the Lease for curing any default) in the performance or observance of any of the terms, provisions, covenants and conditions of the Lease.

4. Rent. The delineated area on Exhibit A is hereby leased to PRTC according to the following schedule:

(a) Year 1: For the first twelve consecutive months commencing with the Lease Commencement Date the rent shall be Twelve Hundred Fifty and 00/100 Dollars (\$1,250.00) per month;

(b) Year 2: For the next twelve consecutive months, the rent shall be Seventeen Hundred Fifty and 00/100 Dollars (\$1,750.00) per month; and

(c) Year 3: For the final twelve consecutive months of the initial lease term, the rent shall be Twenty-Two Hundred Fifty and 00/100 Dollars (\$2,250.00) per month. The first payment shall be due to Telegraph Road Properties within five (5) business days of the lease commencement date. Payments for ensuing months of this Lease shall be payable at the outset of each month, no later than five (5) business days after the first day of the month. Any rent not received by the fifth (5th) day of the month is subject to a ten percent (10%) late charge per month for every month such rent payment is unpaid. In the event that Telegraph Road Properties must serve any five (5)-day notices on PRTC or must undertake any legal proceedings to enforce its rights under this Lease Agreement, PRTC shall be liable for the cost of such notices and legal proceedings, including reasonable attorneys fees that Telegraph Road Properties incurs in undertaking such legal proceedings.

5. Maintenance. PRTC shall be responsible for maintaining the Leasehold area, including but not limited to trash pick up and snow removal.

6. Liability and Indemnification. To the extent permitted by law, PRTC shall indemnify and hold harmless Telegraph Road Properties from liability for any damages, or claims for personal injury or death or property damage arising from the use of the premises described in Exhibit A for commuter parking under this Lease Agreement. Telegraph Road Properties shall remain responsible for damages arising from its own willful misconduct or negligence under Virginia law.

7. Assignment.

(a) Assignment Prohibited. PRTC shall not transfer, assign, mortgage or hypothecate this Lease, in whole or in part, or permit the use of the property by any person or entity other than PRTC, or sublet the property, or any part thereof, without the prior written consent of Telegraph Road Properties in each instance. Such prohibition against assigning or subletting shall include any assignment or subletting by operation of law.

(b) Consent Required. Any assignment or subletting without Telegraph Road Properties' consent shall be void and shall constitute a default hereunder which, at the option of Telegraph Road Properties, shall result in the termination of this Lease or exercise of Telegraph Road Properties' other remedies hereunder. Consent to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting, and the terms of such consent shall be binding upon any person holding by, under or through PRTC.

(c) Telegraph Road Properties' Right in Event of Assignment. If this Lease is assigned or if the Premises or any portion thereof are sublet or occupied by any person or entity other than PRTC, Telegraph Road Properties may collect rent and other charges from such assignee or other party, and apply the amount collected to the rent and other charges reserved hereunder, but such collection shall not constitute consent or waiver of the necessity of consent to such assignment, subleasing or other transfer, nor shall such collection constitute the recognition of such assignee, sublessee or other party as the tenant hereunder or a release of PRTC from the further performance of all of the covenants and obligations of PRTC herein contained. In the event that Telegraph Road Properties shall consent to a sublease or assignment hereunder, PRTC shall pay to Landlord reasonable fees, not to exceed Six Hundred Dollars (\$600.00), incurred in connection with processing of documents necessary to the giving of such consent.

8. Representations of Lessor. Telegraph Road Properties represents that it is the lawful owner of the property subject to this Lease, that it has the full power and right to execute this Lease, that no private restrictions exist with respect to the Leased premises or the use of the property by PRTC as provided by this Lease. Telegraph Road Properties represents that PRTC may have quiet enjoyment of the property subject to the terms of this Lease.

9. Events of Default - Remedies.

(a) Upon the occurrence of any of the following events, Telegraph Road Properties shall have the remedies set forth in subsection 8(b):

(1) PRTC's failure to pay any rental or any other sum due hereunder with ten (10) days after the same shall be due;

(2) PRTC's failure to perform any other term, condition or covenant to be performed by it pursuant to this Lease within thirty (30) days after written notice of such default shall have been given to PRTC by Telegraph Road Properties.

(b) Remedies. Upon the occurrence of the events set forth in subsection 8(a), Telegraph Road Properties shall have the option to take any or all of the following actions, without further notice or demand of any kind to PRTC or any other person:

(1) Immediately reenter and remove all persons and property from the Premises, storing said property in a public place, warehouse or elsewhere at the cost of, and for the account of, PRTC, all without service of notice or resort to legal process and without being deemed guilty of or liable in trespass. No such reentry or taking possession of the Premises by Telegraph Road Properties shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given by Telegraph Road Properties to PRTC. No such action by Telegraph Road Properties shall be considered or construed to be a forcible entry.

(2) Collect by suit or otherwise each installment or rent or other sum as it becomes due hereunder, or enforce, by suit or otherwise, any other term or provision hereof on the part of PRTC required to be kept or performed.

(3) Terminate this Lease by written notice to PRTC. In the event of such termination, PRTC agrees to immediately surrender possession of the property. Should Telegraph Road Properties terminate this Lease, it may recover from Tenant all damages it may incur by reason of PRTC's breach, including the cost of recovering the property and reasonable attorneys' fees.

(4) The remedies given to Telegraph Road Properties in this Section 8(b) shall be in addition and supplemental to all other rights or remedies which Telegraph Road Properties may have under laws then in force.

10. Holding Over. Any holding over after the expiration of the term hereof or of any renewal term shall be construed to be a tenancy from month to month at the rents herein specified (prorated on a monthly basis) and shall otherwise be on the terms herein specified so far as possible.

11. Attorneys' Fees. In the event that at any time during the term of this Lease Telegraph Road Properties institutes any action or proceeding against PRTC relating to the provisions of this Lease or any default hereunder, providing that Telegraph Road Properties prevails in the litigation, PRTC agrees to reimburse Telegraph Road Properties for the reasonable expenses of such action, including reasonable attorneys' fees, incurred therein.

12. Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Virginia.

13. Notices. Operational notices shall be in writing by registered or certified mail or by telex, telefax, or telegram to the below-named representatives of the party notified:

For PRTC:

Ms. Betsy Massie
Director of Grant Administration and Project Development
Potomac and Rappahannock Transportation Commission
14700 Potomac Mills Road
Woodbridge, Virginia 22192

For Telegraph Road Properties, LLC:

Mr. James P. Griffin, Co-Manager
Telegraph Road Properties, LLC
13720 Dabney Road
Woodbridge, Virginia 22121

14. Force majeure. Neither party shall be liable to the other for failure to perform its obligations, if such failure is due to fires, floods, strikes, work stoppages, accidents, wars, riots, insurrection, government action, acts of God, or other act beyond the control of the parties failing to perform.

WITNESS the following signatures and seals:

POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

Witness:

By: _____

Alfred H. Harf, Executive Director

TELEGRAPH ROAD PROPERTIES, LLC
A Virginia limited liability company

Witness:

By: _____

James P. Griffin, Co-Manager

By: _____

Clifton M. Wilder, Co-Manager