



# Board Agenda Item 40

DATE: February 22, 2022

TO: Board of Supervisors

SUBMITTED BY: Susan Holt, Interim Director, Department of Behavioral Health  
Robert W. Bash, Director of Internal Services/Chief Information Officer

SUBJECT: Heritage Centre Lease Agreement

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a Lease Agreement with Heritage Centre, LLC for approximately 173,200 square feet of combined office and storage space located at 3109, 3115, 3119, 3121, 3127, 3133, 3147, 3151, and 3155 N. Millbrook Avenue and 3676 and 3708 E. Shields Avenue, CA 93726, for use by the Department of Behavioral Health, effective March 1, 2022, not to exceed ten years, which includes tenant improvements and a purchase option (\$43,559,311); and,**
- 2. Authorize the Director of the Internal Services Department/Chief Information Officer, or designee, upon review by County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form, to execute an Estoppel Certificate and/or Subordination and Attornment Agreement required by the Lessor, and any other such necessary agreements, certificates, notices, instruments, or documents.**

There is no Net County Cost associated with the recommended actions. Approval of the recommended actions will permit the Department of Behavioral Health (DBH) to continue to utilize the majority of the space at the Heritage Centre, located at Millbrook and Shields Avenues in Fresno. The recommended agreement includes tenant improvements to allow the Department to fully utilize the space and an option to purchase the property at the end of the lease for \$1,000,000. Approval of the recommended actions will authorize the Director of the Internal Services Department/Chief Information Officer, or designee, to execute any documents required by the lessor during the term, including, but not limited to, an estoppel certificate or subordination and attornment agreement. The lease will be funded with Mental Health Realignment and Mental Health Services Act (MHSA) funds. This item pertains to a location in District 3.

ALTERNATIVE ACTION(S):

Your Board may direct the DBH and Internal Services Department (ISD) to pursue other facility options; however, this would result in foregoing a location that best serves the persons served and fulfils the needs of DBH.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The maximum compensation is \$43,559,311 for the 173,200 square feet of combined office (151,650 square feet) and storage (21,550 square feet) space. The lease is \$220,000 for office and storage space, at approximately \$1.27 per square foot, during the first five years of the lease. The lease rate for the office space will have a one-time increase

of 4.5% for the remaining five years of the lease bringing total base rent to \$230,000. Tenant improvements totaling \$10,000,000 are amortized over the full remaining term of the lease upon completion at 8% interest. The lease and tenant improvements will be funded with Mental Health Realignment and Mental Health Services Act (MHSA) funds. Sufficient appropriations and estimated revenues are included in the Department of Behavioral Health Org 5630 FY 2021-22 Adopted Budget and will be included in future budget requests.

DISCUSSION:

DBH has leased office space at the Heritage Centre (Millbrook and Shields Avenues) since May 2000 with several other departments occupying various spaces within the complex over the past 21 years (Lease Agreement Nos. 17-372, 17-285, and 17-324). DBH's Children's Mental Health, Administration, Contracted Services, and Quality Improvement/Information Technology (QI/IT) divisions are currently at the site. DBH is finalizing plans to relocate additional services from the University Medical Center Campus (Cedar and Kings Canyon Avenues) and creating additional Psychiatric Health Facilities.

On June 20, 2017, the Board approved Lease Agreement Nos. 17-372, 17-285, and 17-324 for 163,170 square feet of combined office (141,620) and storage (21,550) space at \$1.43 per square foot, which expired on July 1, 2021.

On June 22, 2021, your Board approved a temporary lease that provided enough time to finalize DBH's design and plans for tenant improvements to the premises and negotiate a long-term lease, including a possible purchase option.

Approval of the recommended lease will allow DBH to continue moving forward large-scale projects including the construction of two Crisis Stabilization Centers, two Psychiatric Health Facilities, a Sobering Center, as well as tenant improvements to buildings that will house DBH Contracted Services and Fiscal staff. The lease also includes the exclusive right to utilize the Centre's parking lot, which contains 514 stalls. The recommended lease includes the option to purchase the entirety of the location at the conclusion of the lease for \$1,000,000. Final documentation and related materials will be brought back to the Board to exercise the purchase option closer to the end of the lease.

The Department will pay a proportional share of the actual operation costs for the premises, such as maintenance, utilities, taxes, and security costs, which is estimated at \$1,440,966 annually.

For a long-term lease to be legally viable, it must comply with the State's constitutional debt limitation, or meet an exception under that limitation. Typically, an exception is present if there is a legally-recognized contingency, such as a "non-funding" provision or "beneficial use" provision. Shorter-term County leases often contain a non-funding provision that allows the County to terminate the lease where funding is not allocated for the lease in any given fiscal year. However, in leases where the County is paying for substantial tenant improvements, it is not feasible for the County to terminate the lease and lose its investment for those improvements. The exception that is proposed for the recommended lease, and which also satisfies the constitutional debt limitation, is a "beneficial use" provision. For example, if the County's payments would be contingent on its "beneficial use" of the recommended leased premises, then the payments are considered successive current-year obligations, and are not legally long-term debt. Pursuant to this proposed "beneficial use" provision, the County is permitted to abate or reduce the amount of rent or building operating cost payments during any period in which the County does not have full use of the facility. This could occur during an event of condemnation, or destruction or damage of the facility. The abatement of payments shall only suspend the period during which the County is otherwise required to make payments, and will not relieve the County from subsequently paying the remainder of the payments once the County has use of the facility. Such an abatement will not be an event of default.

Due to the elimination of the non-funding provision in this recommended lease, in the event of non-occupancy due to budgetary or other restrictions over the term of the lease, the County's financial

obligation may result in a 100% net County cost.

The recommended lease also requires that the County execute an Estoppel Certificate and a Subordination, Non-disturbance, and Attornment Agreement upon the lessor's request, where a lender's deed of trust will be superior to the County's lease, but the County's leasehold interest will not be disturbed, as long as the County complies with all provisions of the lease.

REFERENCE MATERIAL:

BAI #47, June 22, 2021  
BAI #28, July 11, 2017  
BAI #45, June 20, 2017  
BAI #37, January 8, 2013  
BAI File No. 160002, May 16, 2000

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Lease Agreement with Heritage Centre, LLC

CAO ANALYST:

Sonia M. De La Rosa