



Board Agenda Item 10

DATE: July 18, 2023

TO: Board of Supervisors

SUBMITTED BY: Robert W. Bash, Director of Internal Services/Chief Information Officer

SUBJECT: First Amendment to Lease Agreement with Pontiac 4 LLC

RECOMMENDED ACTION(S):

- 1. Approve and accept the assignment of Lease Agreement No. 17-645 with Pontiac 3 & 5 LLC to its successor entity, Pontiac 4 LLC;**
- 2. Approve and authorize the Chairman to execute a First Amendment to Lease Agreement with Pontiac 4 LLC, a California Limited Liability Company, for approximately 37,282 square feet of office space and 65,252 square feet of warehouse space located at 200 W. Pontiac Way, Clovis CA 93612, to establish the option to purchase the property for \$15,700,000 and establishing the date of rent commencement as September 1, 2023, not to exceed 10 years (\$20,958,510); or**
- 3. As an alternative, direct the CAO or his designee to provide notice of termination of Lease Agreement 17-645 pursuant to the terms of that agreement on the grounds that there are no longer state and federal funds available to fund the lease payments.**

Approval of the first recommended action will assign the rights, responsibilities, and obligations of Pontiac 3 & 5 under lease agreement No. 17-645 (Agreement), over to its successor entity, Pontiac 4 LLC. Approval of the second recommended action will amend the Agreement to establish the option to purchase the property located at 200 W. Pontiac Way, Clovis, CA 93612 (Premises) for \$15,700,000, establish the date of rent commencement as September 1, 2023, and removes the non-funding provision from the lease. As an alternative to the second recommended action, approval of the third recommended action would direct staff to terminate the Agreement pursuant to the non-funding clause. This item pertains to a location in District 3.

ALTERNATIVE ACTION(S):

Your Board may direct the Internal Services Department (ISD) to pursue other facility options, including but not limited to keeping the Agreement in effect, pursuing additional negotiations with the owner of the property, or other alternatives as your Board may direct.

FISCAL IMPACT:

The Net County Cost associated with approval of the second recommended action is \$93,583 per month for the lease and an estimated \$72,184 per month for additional operating costs until the purchase option of the building is executed, which is planned for January 2024. If the purchase option is not exercised within the purchase option period, rental payments will continue at \$93,583 per month for the first year and will increase 3% annually for the remainder of the lease period. The additional operational costs will continue at \$72,184 per month. The total estimated potential cost for the recommended amendment including rent and other operational costs is \$20,958,510 for the 10-year period, should the purchase option not be exercised.

Sufficient appropriations for lease costs will be included in the FY 2023-24 Recommended Budget in Org 2540 Interest and Miscellaneous Expenditures. Funding sources for the cost of tenant improvements and the purchase price of \$15,700,00, will be determined based on the Departments to occupy the building, and will be identified at the time of purchase.

DISCUSSION:

On December 12, 2017, your Board approved the Agreement for 37,282 square feet of office space and 65,227 square feet of warehouse space originally intended for use by the County's Department of Social Services (DSS) Child Welfare Services (CWS) branch, not to exceed a ten-year term, effective upon the execution of a written acknowledgement of occupancy, total cost not to exceed \$20,958,510 (Agreement). The Agreement was approved alongside leases for two other buildings on the Clovis Campus, Buildings 1 and 3, that have since been occupied by DSS. The Premises was not occupied by the County as it continued to be occupied by the previous owner, Schneider Electric, as a condition of sale for the original properties. This continued occupation of the Premises by the prior owner would have delayed CWS occupying their new space until at least 2024.

On February 25, 2020, your Board approved a lease for 380 Ashlan Ave. from the owners of 200 W. Pontiac Way, to accommodate CWS on a much-accelerated timeline. Since then, CWS has successfully occupied their building after tenant improvements were completed in early 2022. The County retained the as-then still un-commenced lease for the Premises at 200 W. Pontiac Way. The County and the building owners recognized that the substitution of the 380 Ashlan Avenue building for the County's CWS division would mean the original purpose for the Agreement no longer existed. The County no longer had a department or program with subvented state and federal funding to cover the lease payments for the building. The parties have had discussions, over the past year, regarding possible alternative arrangements for the 200 W. Pontiac Way building. This Board Action Item comes before your Board to present a proposal approved by the owners of the 200 W. Pontiac Building and as an alternative, the option for your Board to terminate the Agreement pursuant to a non-funding clause contained in that lease, based on the lack of state or federal subvented funds to cover the cost of the lease payments. If your Board chooses to approve neither of the recommended actions, the Agreement will remain in place and the County will be obligated to commence lease payments pursuant to that agreement on September 1, 2023.

On March 6, 2020, Pontiac 3 & 5 executed an assignment of the Agreement over to Pontiac 4 LLC without the County's knowledge. Approval of the first recommended action will approve and accept the lessor's assignment of the Agreement to Pontiac 4 LLC, a successor entity of the previous Pontiac 3 & 5 LLC.

Approval of the second recommended action will amend the existing but still un-commenced Agreement to memorialize September 1, 2023 as the rent commencement date, remove the non-funding termination clause from the Agreement, add an option to purchase the Premises, and set the purchase price \$15,700,000. All other terms of the Agreement remain unchanged. Rent for the first year is \$93,583 per month and will increase by approximately 3% each year. Year one utility and operational costs are estimated at \$866,208 annually. The total estimated potential 10-year lease cost for rent and estimated operating costs is \$20,958,510. The purchase option must be executed between January 1, 2024, and June 30, 2024. Staff anticipates executing the purchase option quickly with a closing date for the purchase on or around January 1, 2024, which will end the lease.

Due to the elimination of the non-funding provision in this recommended amendment, in the event of non-occupancy due to budgetary or other restrictions over the term of the lease, the County's financial obligation could result in a 100% Net County Cost. Should your Board approve the second recommended action, staff anticipate that a purchase will be completed on or about January 1, 2024, which will end both the lease and the associated risk obligating the County to pay the lease costs.

The recommended amendment also includes a draft Sale Purchase Agreement for the Premises. A final Sale Purchase Agreement and related materials will be brought back to your Board to formally exercise the

purchase option later this year as documents are finalized pending your Board's adoption of the second recommended action.

If your Board adopts the second recommended action, no action on the third recommended action is required. However, if your Board chooses to adopt the third recommended action, the CAO or his designee would provide the 30 day written notice to the owners of the building at 200 W. Pontiac Way, terminating the Agreement due to non-funding pursuant to Section 11 of that agreement.

REFERENCE MATERIAL:

BAI #12, February 25, 2020
BAI #45, December 12, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Assignment of Lease Agreement 17-645
On file with Clerk - First Amendment
On file with Clerk - Draft Purchase Sale Agreement

CAO ANALYST:

Ahla Yang