



Board Agenda Item 10

DATE: June 18, 2019

TO: Board of Supervisors

SUBMITTED BY: David Pomaville, Director, Department of Public Health
Robert W. Bash, Director, Internal Services/Chief Information Officer

SUBJECT: Lease/Option to Purchase Agreement for Department of Public Health

RECOMMENDED ACTION(S):

1. **Approve and authorize the Chairman to execute a Lease Agreement, including an Option to Purchase, with Lubisich Bros. Investments, LLC, for 12,552 square feet of office space and parking, for the purposes of providing emergency dispatching services and as a training center, of which 10,047 square feet of office space is immediately available for the County's use, located in Clovis, CA, for use by the Department of Public Health, for a 20-year term, which has a rent commencement date not later than December 31, 2019, with base rent not to exceed \$5,964,468, and estimated possible additional rent of \$1,286,397, totaling \$7,250,865, which is the total maximum "Rent" for the 20-year term.**
2. **Authorize the County Administrative Officer and the Director of Internal Services/Chief Information Officer, or their respective designees, each authorized to act individually, to approve and execute, upon review and approval as to legal form by County Counsel, an Estoppel Certificate, and Subordination and Non-Disturbance Agreement relating to the recommended lease agreement, if County is so requested by Lubisich Bros Investments, LLC to sign such documents.**
3. **Authorize the County Administrative Officer and the Director of Internal Services/Chief Information Officer, or their respective designees, each authorized to act individually, to approve and execute (or accept, as applicable), (a) upon review and approval as to legal form by County Counsel, the Memorandum of Lease, and any notices and documents, instruments, certificates, and documents, relating to the consummation of the recommended lease agreement, and (b) any notices and documents relating to the County's administration of the leased premises under the recommended lease agreement.**

Approval of the recommended actions will authorize the County, through the Department of Public Health (DPH), to lease the property located in Clovis, CA (the "Property") for twenty years, and provide an option to purchase the Property beginning after the completion of year ten of the lease. The maximum total Base Rent for twenty years is \$5,964,468, and estimated total maximum Additional Rent is \$1,286,397, for a total possible maximum Rent amount of \$7,250,865 for the 20-year lease term. The recommended lease is structured as a "beneficial use" lease to satisfy the County's constitutional debt limitation. The option to purchase the Property may be exercised at any time after the completion of year ten of the lease, upon six months' notice. The purchase option price is established for each of the years 11 - 20 under the recommended lease (e.g., in year 11, the purchase option price is \$4,269,397). The grand total cost of lease payments and purchase price will be determined by the date the County exercises the purchase option,

which is described in the lease.

Under the recommend lease, the County will be required to begin making Rent payments pursuant to the lease not later than December 31, 2019.

If your Board approves the recommended lease, the County will make improvements for its occupancy (approximately \$3,980,885). If the County's improvements are not completed by that date, the County will be obligated under the recommended lease to pay Rent and absorb the cost of those payments until the County's improvements are completed, and the County's contracted service provider is able to occupy the space and begin making sublease payments to the County.

Staff are working with the County's service provider on the anticipated sublease, and will return to your Board with the proposed sublease as soon as practicable. Because of the complexity of the negotiations related to the lease, the limited opportunities available for suitable space, and time needed to complete all of the necessary steps for a successful outcome, your Board's approval of the lease, without the sublease at this time, is the most advantageous opportunity available to the County at this time.

This item pertains to a location in District 2.

ALTERNATIVE ACTION(S):

Your Board could direct the DPH to pursue other facility options. However, it would result in a lost opportunity to select a desirable available property that fulfills the needs of the DPH.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The maximum total Base Rent for twenty years is \$5,964,468, and estimated total maximum Additional Rent is \$1,286,397, for a total possible maximum Rent amount of \$7,250,865 for the 20-year lease term.

DPH expects that the lease costs will be funded with revenue from agencies served by DPH. However, since the County's contracted service provider, as the sublessee, would also be providing certain federally-reimbursed medical services, the rate the County may charge to the sublessee needs to be an amount that is consistent with fair market value in arms-length transactions (*i.e.*, as a limitation). If there is any disparity between the County's rental rate under its lease, and the County's sublease rental rate, the County will have to absorb those costs.

Staff anticipates that the Property will require County improvement costs of approximately \$3,980,885, which will be funded with approximately \$3,456,950 of existing funding, and an estimated budgeted Net County Cost of \$523,905. DPH's present intention is not to pass the cost of those improvements to the sublessee.

Under the recommend lease, the County will be obligated to begin making Rent payments pursuant to the lease not later than December 31, 2019. If the County's improvements are not completed by that date, the County will have to pay rent and absorb the cost of those payments until the County's improvements are completed, and the County's contracted service provider is able to occupy the space and begin making sublease payments to the County.

Existing funding sources include federal grants, Emergency Medical Services Contingency Fines and Penalties Trust Fund, tenant improvement credits of \$502,350 from lessor, and lease revenues. Sufficient appropriations and estimated revenues will be included in the FY 2019-20 budget request for Public Health Department Org 5620 for rent payments and Capital Projects Org 8858 for tenant improvements.

DISCUSSION:

The recommended Lease Agreement ("Lease") shall be for a term of twenty years, and provides an option to purchase the Property after the end of year ten. The 1.27 acres Property includes a building, constructed in 2018, consisting of approximately 12,552 square feet of office space, of which 10,047 square feet is immediately available for the County's use, and approximately 68 parking spaces. The building is certified by the engineering firm of Brooks-Ransom Associates as an essential services building, as having been built in compliance with Division 12.5 of the Health and Safety Code, commencing at Section 16000.

The remaining 2,505 square feet of office space is currently under lease to a physician for five years (Physician's Lease). Upon expiration or early termination of the Physician's Lease, the remaining 2,505 square feet of office space will be added to the Lease at the then-current lease rate, which is specified in the Lease.

The Base Rent shall be \$1.55 a square foot per month, with a 2.5% annual escalator. The maximum total Base Rent for twenty years is \$5,964,468.

Under this recommended lease, the County shall also pay to the lessor monthly "Additional Rent" payments, which include estimated costs for property taxes, insurance, and maintenance of the Premises, as well as a management fee that shall not exceed \$3,000 per year. At the completion of each year of the term, the lessor will provide to the County an "Actual Cost Statement" of the costs of the "Additional Rent." Any amounts overpaid by the County will be refunded, and any amounts owed will be paid by the County. Additional Rent payments are estimated at a possible \$64,319.84 per year.

The estimated total amount of Rent and Additional Rent for the total possible 20-year lease term is \$7,250,865.

The County may exercise the option to purchase the Property at any time upon six-months' notice after the tenth year of the Lease concludes. The purchase price for the Property in year eleven of the Agreement is \$4,269,397. The grand total cost of Lease payments and purchase price will be determined by the date the County of Fresno exercises the purchase option, which is all described in the Lease.

Under the recommended lease, the Property would be used as office space, primarily for dispatching emergency services, and a training center. DPH intends for the County to sublease the Property to the County's contracted service provider. Since the County's contracted service provider, as the sublessee, would also be providing certain federally-reimbursed medical services, the rate the County may charge to the sublessee needs to be an amount that is consistent with fair market value in arms-length transactions (*i.e.*, as a limitation). If there is any disparity between the County's rental rate under its lease, and the County's sublease rental rate, the County will have to absorb those costs. As part of the County's due diligence efforts to determine the fair market value of the sublease, County staff will be seeking an appraisal; based on that, the County will seek guidance from the applicable regulatory agency. If there is any disparity between the fair market rent that the County may charge to the sublessee, and the Lease payments the County is required to make to the lessor, the County will have to absorb those costs itself.

The County presently is engaging in discussions with the County's contracted service provider. Therefore, details relating to the mechanics of the sublease payments are still under review.

If your Board approves the recommended actions, staff will complete the construction plans for the County's improvements, begin the permitting process, and solicit for bids from the County's Job Order Contracting (JOC) contractors. Under the recommended lease, the County is required to begin making Rent payments not later than December 31, 2019. If the County's improvements are not completed by that date, the County will have to pay rent and absorb the cost of those payments itself until the tenant improvements are completed, and the County's contracted service provider is able to occupy the space and begin making sublease payments to the County.

Because the recommended lease extends more than one fiscal year, it needs to satisfy the County's constitutional debt limitation. As is typical for multi-year municipal leasing arrangements, the recommended lease is structured as a "beneficial use lease," which means the County agrees to pay the Rent, except where it cannot use the property, e.g., due to damage, destruction, or condemnation. If the inability to use the Property is temporary, the County's obligation to make rental payments is merely suspended.

Recommended action 2, above, authorizes the future use of an Estoppel Certificate, and Subordination and Non-Disturbance Agreement, the general terms of which are outlined in the recommended lease.

The recommended lease also includes a form of the Purchase and Sale Agreement, which would be used in connection with the County's exercise of its purchase option under the lease.

This Property satisfies the needs and requirements sought by the Department of Public Health. Staff anticipates that the Property will require County improvement costs of approximately \$3,980,885, funded with approximately \$3,456,950 of existing funding and estimated budgeted Net County Cost of \$523,905.

Public Health will bring additional items to your Board at a later date for the subsequent sublease agreement, necessary budget adjustments, and/or appropriation increases.

This project has been determined categorically exempt from CEQA under Section 15327 and 15301(a).

A Phase I ESA (Environmental Site Assessment) was completed by Public Works and Planning on April 30, 2019, which concluded that there is no evidence of environmental concerns.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Lease Agreement

CAO ANALYST:

Yussel Zalapa