

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

November 17, 2020

FROM

**TERRY W. THOMPSON, Director, Real Estate Services Department
CASONYA THOMAS, Assistant Executive Officer, Human Services**

SUBJECT

Amendment No. 4 to Lease Agreement with Cooley Court, LLC for Storage and Inventory Distribution Space for the Human Services Department in San Bernardino

RECOMMENDATION(S)

1. Approve the Real Estate Services Department's use of an alternative procedure in lieu of a Formal Request for Proposals as allowed per County Policy 12-02 – Leasing Privately Owned Real Property for County Use, to add two three-year options to extend the term of Lease Agreement No. 05-941 with Cooley Court, LLC for the Human Services Department in San Bernardino.
2. Approve Amendment No. 4 to Lease Agreement No. 05-941 with Cooley Court, LLC, to extend the term of the lease three years for the period commencing on the first day of the calendar month following landlord's completion of certain tenant improvements (projected to occur on January 1, 2021) by exercising an existing extension option, following a permitted 15-month holdover beginning October 1, 2019 through the day before the extended term commences, provide for landlord's completion of turn-key tenant improvements with costs to be amortized over the three-year term, adjust the rental rate schedule, add two three-year options to extend the term of the lease (for an aggregate term of 21 years if both options are exercised), and update standard lease agreement language for approximately 48,300 square feet of storage and inventory distribution space for the Human Services Department at 1140 East Cooley Avenue in San Bernardino in the amount of \$1,800,237.
3. Authorize the Purchasing Department to issue purchase orders, as necessary, for a total amount not to exceed \$5,000, for any contingencies and/or minor change orders that may arise in order to complete the turn-key tenant improvements set forth in Amendment No. 4 (Four votes required).

(Presenter: Terry W. Thompson, Director, 387-5252)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The total cost of this three-year amendment, including the permitted holdover in the total amount of \$499,905, calculated at the current lease rate of \$33,327 per month for 15 months, and amortized tenant improvements of \$76,392, is \$1,800,237. Lease payments will be made from the Real Estate Services Department (RESA) Rents budget (7810001000) and reimbursed from the Human Services (HS) Administrative Claim budget (5010001000) which is funded 86% Federal/State and 14% with Realignment/NCC. Other costs associated with this lease include custodial services and utilities, which will be paid directly from the HS budget. Sufficient

appropriation is included in the 2020-21 Rents and HS budgets and will be included in future recommended budgets. Annual lease costs are as follows:

<u>Period (projected)</u>	<u>Annual Lease Cost</u>	<u>Estimate of Other Costs Associated With this Lease</u>
October 1, 2019 through December 31, 2020	\$ 499,905	\$134,065
January 1, 2020 through December 31, 2021	\$ 425,388	\$138,087
January 1, 2021 through December 31, 2022	\$ 433,392	\$142,230
January 1, 2022 through December 31, 2023	<u>\$ 441,552</u>	<u>\$146,497</u>
Total Cost	\$1,800,237*	\$560,879

*This includes the turn-key tenant improvement costs of \$76,392, which have been amortized over the 36-month extended lease term.

BACKGROUND INFORMATION

The recommended action will amend an existing lease with Cooley Court, LLC (Landlord) to extend the term of the lease (following a permitted holdover) three years for the period commencing on the first day of the calendar month following landlord's completion of certain tenant improvements (projected to occur on January 1, 2021) by exercising an existing extension option, provide for turn-key tenant improvements totaling \$76,392, which shall be amortized over the extended term, adjust the rental rate schedule, add two three-year options to extend the term of the lease, and update standard lease agreement language for HS because of the continuing need to provide storage and inventory distribution space for HS in the San Bernardino area.

On September 20, 2005 (Item No. 26), the Board of Supervisors (Board) approved a 10-year Lease Agreement, No. 05-941, with two three-year options to extend the term of the lease for 48,300 square feet of storage and inventory distribution space at 1140 East Cooley Avenue in San Bernardino. The original term of the lease was for the period of September 1, 2006 through August 31, 2016. In the 15 years since the lease was originally approved, the Board has approved three amendments to revise the commencement, end, and early termination option dates, provide for additional tenant improvements, adjust the rental rate schedule, extend the term of the lease by exercising the first option to extend the term of the lease, and update standard lease agreement language.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	November 7, 2006	29
2	April 1, 2008	27
3	October 4, 2016	28

HS requested RESD process an amendment to exercise the final option to extend the term of the lease for three years and negotiate a tenant improvement project to upgrade interior flooring and paint, upgrade the perimeter fencing which secures County vehicles, add exterior lighting, and install bollards near the front door with the cost of the improvements to be amortized over the extended term. Most of the tenant improvements are intended to increase security at the facility. Due to protracted negotiations and delays caused by the global pandemic, the lease expired on September 30, 2019 and went into a permitted holdover beginning October 1, 2019. The improvements will be constructed during holdover and the extended term shall commence on the first day of the calendar month following landlord's completion of certain tenant improvements (projected to occur on January 1, 2021).

RESD conducted a market survey of comparable properties in the San Bernardino area and determined that the existing \$0.69 per square foot per month rental rate for this lease is a fair market rate. Therefore, RESD was able to maintain the existing base rental rate with no

escalation for the first year of the extended term with 2% annual escalations thereafter. The Landlord agreed to amortize the tenant improvements, totaling \$76,392 over the 36-month extended term, adding \$2,122 per month (\$0.04 per square foot per month) to the base rate.

There is an ongoing County need for storage and inventory distribution functions in the San Bernardino area and this location meets the needs for HS. This Amendment No. 4 to Lease Agreement 05-941 allows for the continued use of 48,300 square feet of storage and inventory distribution space in San Bernardino, and adds two three-year options to extend the term of the lease.

In the administration of the lease, the amendment permits the Director of RESD to execute a commencement date certificate to confirm the commencement date of the extended term following landlord's actual completion of the turn-key tenant improvements, provided that such date occurs within 90 days of the projected date of January 1, 2021, and to execute amendments that solely reflect a successor landlord following a sale of the property. which is consistent with the existing administrative authority for the Director of RESD to exercise the County's early termination right and to execute subordination, non-disturbance, and attornment agreements to preserve the County's lease rights during landlord's financing transactions involving the property. All other terms and conditions remain unchanged.

Staff has reviewed the recommended action pursuant to the California Environmental Quality Act (CEQA) and has determined that it does not constitute a project. Accordingly, no further action is required under CEQA.

Summary of Lease Terms

Lessor:	Cooley Court, LLC (Donald Kaplan, Manager)
Location:	1140 East Cooley Drive, San Bernardino
Size:	48,300 square feet of storage and inventory distribution space
Term:	Three years, commencing on the first day of the calendar month following landlord's completion of certain tenant improvements (projected to occur on January 1, 2021, following a permitted 15-month holdover period)
Options:	Two three-year options to extend the term
Rent:	Cost per sq. ft. per month: \$0.73* modified gross (Includes \$.04 per square foot for turnkey tenant improvements) Monthly: \$35,449 Annual: \$425,388 *Mid-range for comparable facilities in the San Bernardino area per supporting lease comparables on file
Annual Increases	2%
Improvement Costs:	Provided by Lessor at a cost of \$76,392 with the cost to be amortized over the 36-month extended lease term at \$2,122 per month and an allocation up to \$5,000 for any contingencies and change order work to the turn-key tenant improvements set forth in

Amendment No. 4 to be authorized by RESD and/or HS representatives and paid by purchase orders as needed

Custodial:	Provided by County
Maintenance:	Provided by Lessor
Utilities:	Provided by County
Insurance:	The Certificate of Liability Insurance, as required by the lease, is on file with RESD
Right to Terminate:	None during the extended term except due to default
Parking:	78 spaces, sufficient for County needs

PROCUREMENT

On September 20, 2005 (Item No. 26), the Board approved Lease Agreement No. 05-941, which was procured according to County Policy 12-02 – Leasing Privately Owned Real Property for County Use (Policy), using a Formal Request for Proposals (RFP) process. The procurement process required by the Policy does not apply to amendments of existing leases, provided the amendment does not exceed the maximum term (including options) of the lease. Therefore, the Policy does not apply to the County's exercise of the existing three-year option to extend the term of the lease but does apply to the addition of the two three-year extension options.

The Policy provides that the Board may approve the addition of the two five-year options to extend the term of the lease through the use of an alternative procedure in lieu of a formal RFP process whenever the Board determines that compliance with the formal RFP requirements would unreasonably interfere with the financial or programmatic needs of the County, or when the use of an alternative procedure would otherwise be in the best interest of the County. RESD and HS request Board approval to add two three-year options to extend the term of the lease. The Policy also requires a thorough and detailed review by the County Administrative Office or designee to validate the need for and provide a competitive analysis of any lease with a term of more than 20 years. Approval of Amendment No. 4 will potentially yield an aggregate term of 21 years if both three-year options to extend the term of the lease are exercised.

RESD completed a competitive analysis of comparable properties and found the proposed rental rate to be competitive. This site best meets the anticipated long-term requirements of HS in the San Bernardino area, and if the options are exercised, would minimize disruption to HS operations and save moving costs.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel and Adam Ebright, Deputy County Counsel) on October 16, 2020; Human Services (John Hallen, Administrative Analyst, 388-0208) on October 8, 2020; Purchasing (Bruce Cole, Buyer II, 387-2464) on October 13, 2020; Finance (Carl Lofton, Administrative Analyst, 387-5404) on November 2, 2020; and County Finance and Administration (Tanya Bratton, Deputy Executive Officer, 388-0280 and Matthew Erickson, County Chief Financial Officer, 387-5423) on November 2, 2020.

(JAG: 677-8210)