



San Bernardino County

Legislation Text

File #: 7090, Agenda Item #: 79

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

November 15, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

JOSHUA DUGAS, Director, Department of Public Health

SUBJECT

Lease Agreement with Tri-City Property, LLC for Office Space 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 San Bernardino County Use to lease approximately 29,582 square feet of office space from Tri-City Property, LLC, for approximately 11 years for the projected period of February 1, 2023 through June 30, 2034, subject to the landlord's completion of certain turnkey tenant improvements, with one five-year extension option for the Department of Public Health at 451 Vanderbilt Way, Suites 400 and 425 in San Bernardino.
2. Approve new lease agreements with Tri-City Property, LLC, including non-standard terms, for approximately 29,582 square feet of office space for the Department of Public Health at 451 Vanderbilt Way, Suites 400 and 425 in San Bernardino in the amount of \$12,851,692, for approximately 11 years for the projected period of February 1, 2023 through June 30, 2034 as follows:
 - a. Suite 425 commencing on February 1, 2023 through June 30, 2023.
 - b. Both Suite 400 and 425 commencing on July 1, 2023 through June 30, 2034, subject to the landlord's completion of certain turnkey tenant improvements, with one five-year extension option.
3. Authorize the Purchasing Department to issue purchase orders, as necessary, for a total amount not to exceed \$50,000, for any contingencies and/or change orders that may arise in order to complete the tenant improvements set forth in the initial lease (Four votes required).

(Presenter: Terry W. Thompson, Director, 387-5000)

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 require additional Discretionary General Funding (Net County Cost). The total cost of this 11-year agreement is \$12,851,692 comprising of \$11,442,813 in rent and an amount not to exceed \$1,408,879 for a one-time reimbursement of tenant improvement costs. Lease payments will be made from the Real Estate Services Department (RESA) Rents budget (7810001000) and reimbursed from the Department of Public Health (DPH) budget (9300001000). The financial investment for the initial year of the lease agreement will be funded by property insurance claim reimbursements and subsequent years will be

funded by the California Department of Public Health (CDPH) Future of Public Health Funding allocated to DPH on an annual basis. Approval of the necessary budget adjustments to the RESD and DPH 2022-23 budgets are not requested at this time; however, they will be included on the future mid-year countywide budget report presented to the Board of Supervisors (Board) for approval. Annual lease costs for a projected commencement date of February 1, 2023, are as follows:

<u>Year</u>	<u>Annual Lease Cost</u>
February 1, 2023 - June 30, 2023	\$ 1,485,104*
July 1, 2023 - June 30, 2024	\$ 887,460
July 1, 2024 - June 30, 2025	\$ 915,859
July 1, 2025 - June 30, 2026	\$ 940,708
July 1, 2026 - June 30, 2027	\$ 969,106
July 1, 2027 - June 30, 2028	\$ 997,505
July 1, 2028 - June 30, 2029	\$ 1,029,454
July 1, 2029 - June 30, 2030	\$ 1,061,402
July 1, 2030 - June 30, 2031	\$ 1,089,801
July 1, 2031 - June 30, 2032	\$ 1,125,299
July 1, 2032 - June 30, 2033	\$ 1,157,248
July 1, 2033 - June 31, 2034	<u>\$ 1,192,746</u>
Total Cost	\$12,851,692

*Tenant Improvement costs in the amount of \$1,408,879 included in rent projection

BACKGROUND INFORMATION

The recommended actions will approve RESD's use of an alternative procedure in lieu of issuing a formal Request for Proposal (RFP) as allowed under San Bernardino County (County) Policy 12-02 - Leasing Privately Owned Real Property for County Use, to enter into a new 11-year lease agreement with Tri-City Property, LLC, for the projected period of February 1, 2023 through June 30, 2034; Suite 425 commencing on February 1, 2023 through June 30, 2023, and both Suite 400 and 425 commencing on July 1, 2023 through June 30, 2034; subject to the landlord's completion of certain turnkey tenant improvements, with one five-year extension option for approximately 29,582 square feet of office space located at 451 Vanderbilt Way, Suites 400 and 425 in San Bernardino (Vanderbilt Property).

On June 19, 2022, a fire occurred at 172 West 3rd Street, where numerous DPH staff were located. The fire created unsafe conditions in the building, causing local authorities to deem it unsuitable for occupation. On August 9, 2022 (Item No. 46), the Board approved Lease Agreement No. 22-754 with Tri-City Property, LLC for office space on the second floor of 451 Vanderbilt Way. In an effort to maintain the co-location of the remaining DPH staff who are currently located at 351 North Mountain View Street, additional space at the 451 Vanderbilt Way property has been negotiated. This new 11-year lease with Tri-City Property, LLC will allow for that co-location of DPH staff and provide increased efficiencies in operation of the department.

On June 28, 2022 (Item No. 63), the Board found there was substantial evidence that the condition of the building located at 172 West 3rd Street caused by the fire on June 19, 2022, created an emergency pursuant to Public Contract Code section 22050. This emergency required immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services.

The total cost of this 11-year agreement is \$12,851,692, comprising \$11,442,813 in rent and an amount not to exceed \$1,408,879 for a one-time reimbursement of tenant improvement costs. The initial rent is \$2.50 per square foot per month, with the rental rate schedule subject to 3% annual increases. The turnkey improvements include conference rooms, breakrooms, painting and carpeting within the interior of the

property. The County has the right to terminate the lease with notice after the 84th full calendar month of the initial term.

The lease allows for the RESD Director in administering the lease, to:

- Exercise the County's early termination right.
- Execute a commencement date certificate to verify the occurrence of the actual commencement date.
- Execute estoppel certificates confirming facts regarding the lease and subordination, non-disturbance, and attornment agreements to preserve the County's lease rights during the landlord's financing transactions involving the real property.
- Execute amendments to the lease that solely reflect a successor landlord following the original landlord's sale of the real property and assignment of the lease.

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:	Tri-City Property, LLC (Joon Choi, Managing Member)
Location:	451 Vanderbilt Way, Suites 400 and 425 in San Bernardino
Size:	29,582 square feet of office space
Term:	11 years with projected commencement date of February 1, 2023, Suite 425 commencing on February 1, 2023 through June 30, 2023, and both Suite 400 and 425 commencing on July 1, 2023 through June 30, 2034; subject to landlord's completion of certain turnkey tenant improvements
Options:	One five-year option to extend the term of the lease
Rent:	Cost per sq. ft. per month: \$2.50* full-service gross Monthly: \$73,955 Annual: \$887,460 *Mid-range for comparable facilities in the San Bernardino area per the competitive set analysis on file with RESD
Annual Increases:	As defined in the lease
Improvement Costs:	Landlord responsibility
Custodial:	Provided by Lessor
Maintenance:	Provided by Lessor
Utilities:	Provided by Lessor
Insurance:	The Certificate of Liability Insurance as required by the lease will be obtained by RESD prior to occupancy

Right to Terminate: County has the right to terminate the lease with notice after the 132nd full calendar month of the initial term

Parking: Sufficient for County needs

The lease includes terms that differ from the standard County contract. The non-standard terms include the following:

1. The County has a one-time option to terminate the lease effective as of the last day of the 84th month of the initial lease term.
 - a. The standard County term reserves the right to terminate the contract for convenience with 30 days' notice.
 - b. Potential Impact: If the County desires to terminate the lease earlier than 84 months into the lease, it will not be able to do so. The County must also adhere to the specified noticing procedures in order to terminate the lease in the 84th month.
2. The County agrees to assume all risk of damage to property and injury to persons in, on or about the premises from any cause whatsoever, and agrees to hold harmless the landlord, the landlord's property manager, mortgagees of landlord, successors and assigns, and members, partners, sub-members and sub-partners, direct and indirect affiliates (Landlord Parties) from damages or injury to persons or property. The County additionally agrees to indemnify, defend, protect, and hold harmless the Landlord Parties from and against any and all loss, cost, damage, expense, claims and liability incurred in connection with or arising from any act, omission or negligence of the County, or the County's contractors, agents, employees, licensees or invitees.
 - a. The standard County term requires the landlord to indemnify and defend the County in the event of damage to persons or property.
 - b. Potential Impact: In the event of injury or damage to persons or property on the Premises, the County will be liable for the entirety of the cost, without the ability to seek compensation from the landlord. In addition, by agreeing to indemnify the landlord, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, could be brought against the landlord and the County would be responsible to defense and reimburse the landlord for costs, expenses, and damages.
3. The landlord has the right to transfer all or any portion of its interest in the real property and/or the lease and upon such transfer shall automatically be released from all liability under the lease.
 - a. The standard County term requires the County to approve any assignment of the contract.
 - b. Potential Impact: The landlord may transfer the lease to another party or sell the real property without the consent or knowledge of the County.
4. The landlord has only agreed to carry general liability insurance in the same amounts as required by the County to be carried in the lease. In addition, the landlord will carry physical damage insurance during the lease term in such amounts as landlord may from time to time reasonably determine.
 - a. The standard County term requires the landlord to carry insurance in the amounts set forth in County Policy 11-07.
 - b. Potential Impact: The landlord is not required to carry insurance typically required by Policy 11-07, including worker's compensation/employers' liability, automobile liability insurance, umbrella liability insurance, or potentially fire insurance or environmental liability insurance. In the event of an occurrence on the property, this could leave the County with inadequate coverage on the landlord's behalf and result in the County not receiving a full recovery for damages.

5. The landlords' liability is limited solely and exclusively to an amount which is equal to the interest of the landlord in the building complex, and the Landlord Parties have no personal liability under the lease.
 - a. The standard County term does not allow for limitation of liability by a contractor.
 - b. Potential Impact: If the landlord causes injury or damage, its liability will be limited to an unknown amount, which means the County may not receive a full recovery.

RESD and DPH recommend approval of the lease for the Vanderbilt Property with Tri-City Property, LLC, including the non-standard terms, because of the urgent nature of finding a permanent replacement workspace for the displaced DPH employees. Approval of the lease will allow DPH to relocate staff who were impacted by the June 19 fire and continue providing needed services to the public.

PROCUREMENT

RESD is requesting the Board to approve the use of an alternative procedure in lieu of a formal RFP as allowed per County Policy 12-02 - Leasing Privately Owned Real Property for County Use, to lease approximately 29,582 square feet of office space in San Bernardino for DPH for 11 years for the projected period of February 1, 2023 through June 30, 2034, subject to the landlord's completion of certain turnkey tenant improvements, with one five-year extension option. Policy 12-02 provides that the Board may approve the use of an alternative procedure to the use of a RFP process whenever the Board determines that compliance with the 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.

On June 28, 2022 (Item No. 63), the Board found that there is substantial evidence that the condition of the building located at 172 West 3rd Street caused by a major fire which occurred on June 19, 2022, created an emergency pursuant to Public Contract Code section 22050, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services. The use of an alternative procedure was necessary, due to the immediate need to find replacement space for the County staff displaced by the fire.

RESD, acting in its approved capacity as the County Administrative Office designee to review proposed real property leases under Policy 12-02, completed a competitive analysis of the area and found the lease rate is competitive for a 10-year term and this premises best meets the requirements of the department due to its close proximity to the former 351 North Mountain View Street location and its ability to serve the same community.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Kristina Robb, Principal Assistant County Counsel, 387-5436) on November 2, 2022; Public Health (Jennifer Osorio, Assistant Director, 387-9146) on September 2, 2022; Risk Management (Victor Tordesillas, Director, 386-8623) on November 4, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on September 7, 2022; Finance (Paul Garcia, Administrative Analyst, 386-8392, and Penelope Chang, Administrative Analyst, 387-4886) on October 28, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on October 28, 2022

(PN: 677-8321)