



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 2

DATE: February 11, 2021

TO: Mayor Jerry L. Demings
- AND -
County Commissioners

THROUGH: Mindy T. Cummings, Manager *MTC*
Real Estate Management Division

FROM: Alex Feinman, Assistant Manager *AF/MTC*
Real Estate Management Division

CONTACT PERSON: **Mindy T. Cummings, Manager**

DIVISION: **Real Estate Management**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of First Amendment to Sublease Agreement by and between Orange County and Orange County Health Department and authorization for the Real Estate Management Division to furnish notices, required or allowed by the sublease, as needed.

PROJECT: FDOH Emergency Storage Facility at Sunport Center – Sublease with FDOH
8026 Sunport Drive, Units 307-311, Orlando, Florida 32809
Lease File #5080

District 4

PURPOSE: To continue to provide warehouse space for the Orange County Health Department Emergency Services.

ITEM: First Amendment to Sublease Agreement
Revenue: Year 1 - \$5,789.19 base rent per month
Year 2 - \$5,963.13 base rent per month
Year 3 - \$6,140.75 base rent per month
Size: 15,225 square feet
Term: 3 years
Options: None

BUDGET: Account No.: 0001-060-2520-6245

APPROVALS: Real Estate Management Division
County Attorney's Office
Health Services Department

REMARKS: Orange County (County) currently leases warehouse space at the Sunport Commerce Center at 8026 Sunport Drive, Orlando (Site) under a lease approved by the Board on December 18, 2012, as amended and extended (Lease). In turn, County subleases the warehouse space to the Orange County Health Department (OCHD) pursuant to the Sublease Agreement approved by the Board on January 8, 2013 (Sublease).

OCHD uses the premises to store supplies in the event of an emergency.

This First Amendment to Sublease Agreement renews the term of the Sublease to cover the first and second sublease renewal terms, expiring June 30, 2022. It also outlines the current reimbursement obligations for the common area, insurance and taxes expenses incurred by OCHD.

All other terms and conditions of the Sublease shall remain in effect.

ORANGE COUNTY, FLORIDA
and
ORANGE COUNTY HEALTH DEPARTMENT

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (the “**First Amendment**”) is made as of the date last executed below (the “**First Amendment Effective Date**”) and entered into by and between Orange County, a charter county and political subdivision of the State of Florida (“**County**”) and Orange County Health Department, a Division of the Florida Department of Health, an agency of the State of Florida (“**OCHD**”).

RECITALS

- A. County entered into that certain “Lease Agreement” approved by the Orange County Board of County Commissioners (“**BCC**”) dated December 18, 2012 by and between Orlando Sunport FlexxSpace, Ltd. (“**Lessor**”) and County, as extended by that certain “Agreement to Exercise Renewal Option” dated June 20, 2016, as amended by that certain “First Amendment to Lease Agreement” approved by the BCC dated January 9, 2018, and as extended by that certain “Agreement to Exercise Second Renewal Option” dated November 12, 2019 (collectively, the “**Lease**”).
- B. County entered into that certain “Sub-Lease Agreement” approved by the BCC dated January 8, 2013 by and between County and OCHD (the “**Sublease**”) for the Sub-Leased Premises as outlined in the Section 1 of the Sublease.
- C. County and OCHD acknowledge that the Sublease expired on June 30, 2016 and OCHD has been in possession of the Sub-Leased Premises with no active lease since June 30, 2016. OCHD, though not under an express sublease agreement with County, has to date been operating under the terms and conditions of the Sublease though expired.
- D. County and OCHD desire to renew the term of the Sublease for an additional three (3) year term, retroactive to July 1, 2016.
- E. A dispute arose between County and Lessor regarding the method of calculating County’s share of Project Operating Expenses (pursuant to Section 4 of the Lease), guard/patrol services (pursuant to Section 6 of the Lease), Lessor’s insurance premiums (pursuant to Section 7 of the Lease), Real Estate Taxes (pursuant to Section 8 of the Lease), and other

FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
Lease #5080

expenses charged to County (collectively “**Pass-through Expenses**”) under the Lease, resulting in alleged balances due as claimed by Lessor, but disputed by County.

- F. County and Lessor entered into that certain First Amendment to Lease Agreement to settle such Pass-through Expenses.
- G. County and OCHD desire to amend the terms of the Sublease in furtherance of resolving the dispute with Lessor and to clarify the Pass-through Expenses moving forward as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

- 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.
- 2. Definitions. Any defined (capitalized) terms used in this First Amendment, but not defined in this First Amendment, shall have the meaning given to such terms by the Sublease or Lease, as applicable.
- 3. First Sublease Renewal Term. County and OCHD hereby retroactively extended the term of the Sublease for an additional three (3) years, commencing July 1, 2016 and terminating on June 30, 2019 (the “**First Sublease Renewal Term**”).
- 4. Base Rent for First Sublease Renewal Term. OCHD paid County Base Rent for the Sub-Leased Premises in accordance with the following schedule during the First Sublease Renewal Term:

Lease Months	Annual Per Square Foot	Annual Rent	Monthly Installments
July 1, 2016 – June 30, 2017	\$4.57	\$69,578.25	\$5,789.19
July 1, 2017 – June 30, 2018	\$4.70	\$71,557.50	\$5,963.13
July 1, 2018 – June 30, 2019	\$4.84	\$73,689.00	\$6,140.75

- 5. Second Sublease Renewal Term. County and OCHD hereby extend the term of the Sublease for an additional three (3) years, commencing July 1, 2019 and terminating on June 30, 2022 (the “**Second Sublease Renewal Term**”).
- 6. Base Rent for Second Sublease Renewal Term. OCHD shall pay County Base Rent for the Sub-Leased Premises in accordance with the following schedule during the Second Sublease Renewal Term:

FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
Lease #5080

Lease Months	Annual Per Square Foot	Annual Rent	Monthly Installments
July 1, 2019 – June 30, 2020	\$6.00	\$91,350.00	\$7,612.50
July 1, 2020 – June 30, 2021	\$6.15	\$93,633.75	\$7,802.81
July 1, 2021 – June 30, 2022	\$6.30	\$95,917.50	\$7,993.12

7. Pass-through Expenses.

- a. OCHD acknowledges and understands that there has been a dispute with Lessor as to the calculation of Pass-through Expenses charged to the County as Lessee under the Lease.
- b. County and OCHD agree for purposes of calculating Pass-through Expenses, that the Pass-through Expenses for calendar year 2013 were \$2.92 (rounded) per square foot based on Lessor’s Project Operating Expenses of \$335,406.75, Real Estate Taxes of \$132,307.72, and Lessor then owning 160,134 leasable square feet of space in the Project. As such, for calendar year 2013, OCHD paid County \$44,435.76 for OCHD’s share of Pass-through Expenses based on the Leased Premises having 15,225 square feet (as then calculated by the methodology set forth in the Lease).
- c. Notwithstanding anything else in the Sublease to the contrary, County and OCHD hereby acknowledge and agree that OCHD’s share of Pass-through Expenses were and/or shall be in according with the following schedule:

Calendar Year	OCHD’s Share of Pass-through Expenses
2014	\$46,657.55
2015	\$48,990.43
2016	\$51,439.95

County and OCHD hereby further acknowledge and agree that the amounts set forth above for OCHD’s share of Pass-through Expenses for calendar years 2014, 2015, and 2016: (i) were calculated by starting with OCHD’s share of Pass-through Expenses for calendar year 2013 (\$44,435.76) and applying the five percent (5%) cap on annual increases set forth in paragraph 4.b.ii of the Lease; and (ii) are less than the amount that would result from multiplying OCHD’s Proportionate Share by the actual Pass-through Expenses incurred by Lessor during calendar years 2014, 2015, and 2016.

- d. As a result of County and OCHD’s agreements set forth in this Section, County and OCHD acknowledge and agree as of the Effective Date of this First Amendment, OCHD has remitted all outstanding balances owed for OCHD’s share of Pass-through Expenses for calendar years 2014, 2015, and 2016, as represented on

Attachment I "Payment Journal Entry", which is hereby incorporated and attached hereto this amendment.

- e. For each of calendar years 2017, 2018, and 2019, OCHD shall be responsible for Pass-through Expenses consistent with the terms and conditions of the Lease.
- f. For avoidance of doubt, Section 6 of the First Amendment to Lease Agreement between County and Lessor is as follows:

"For each of calendar years 2017, 2018, and 2019, the Parties [Lessor and County] agree that ... in no event shall Lessee's [County's] share of Passthrough Expenses for a given calendar year exceed the lesser of: (i) Lessee's [County's] share of Passthrough Expenses simply calculated as Lessee's [County's] Proportionate Share multiplied by the actual amount of Passthrough Expenses incurred by Lessor for a given calendar year; and (ii) Lessee's [County's] share of Passthrough Expenses for the immediately prior calendar year increased by five percent (5%). For example only, and without giving any effect to subclause (i) of this Section above, pursuant to subclause (ii) of this Section above in no event may Lessee's [County's] share of Passthrough Expenses for calendar year 2017 exceed \$54,011.94 (i.e. Lessee's [County's] share of Passthrough Expenses calendar year 2016, \$51,439.95, increased by 5%)."

8. Pass-through Expenses – Second Sublease Renewal Term. OCHD shall continue to pay all Pass-Through Expenses. For avoidance of doubt, per Section 7 of the First Amendment to Lease Agreement: *"...for calendar year 2020 and any and all calendar years thereafter, the Parties [Lessor and County] agree that ... in no event shall Lessee's [County's] share of Modified Passthrough Expenses for a given calendar year exceed the lesser of: (i) Lessee's [County's] share of Modified Passthrough Expenses simply calculated as Lessee's [County's] Proportionate Share multiplied by the actual amount of Modified Passthrough Expenses incurred by Lessor for a given calendar year; and (ii) Lessee's [County's] share of Modified Passthrough Expenses for the immediately prior calendar year increased by five percent (5%). As used herein, the term "Modified Passthrough Expenses" shall mean and refer to all Passthrough Expenses less and except Real Estate Taxes. For avoidance of doubt, the intent of this Section is that for calendar year 2020, and for any and all calendar years thereafter, the limitation that year-to-year Passthrough Expenses not increase by more than five percent (5%) ... shall not apply to Real Estate Taxes (which Real Estate Taxes shall, for calendar year 2020 and any and all calendar years thereafter, be calculated and paid as provided in Section 8 of the Lease, as amended by this First Amendment).*

9. Care of the Premises. County and OCHD agree that Section 8 of the Sublease shall be modified to include the following at the end of the existing paragraph 8 of the Sublease, and as part of the list describing OCHD's responsibility for repairs and maintenance of the HVAC equipment servicing the Subleased Premises:

FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
Lease #5080

- i. Year 1 of the First Sublease Renewal Term, OCHD shall pay for the first Four Thousand Dollars (\$4,000.00) of maintenance and repair costs minus the amount paid for in the first 42 months of the Lease Term.
- ii. Year 2 of the First Sublease Renewal Term, OCHD shall pay for the first Five Thousand Dollars (\$5,000.00) of maintenance and repair costs minus the amount paid for in the first 54 months of the Lease Term.
- iii. Year 3 of the First Sublease Renewal Term, OCHD shall pay for the first Six Thousand Dollars (\$6,000.00) of maintenance and repair costs minus the amount paid for in the first 66 months of the Lease Term.
- iv. Year 1 of the Second Sublease Renewal Term, OCHD shall pay for the first Seven Thousand Dollars (\$7,000.00) of maintenance and repair costs minus the amount paid for in the first 78 months of the Lease Term.
- v. Year 2 of the Second Sublease Renewal Term, OCHD shall pay for the first Eight Thousand Dollars (\$8,000.00) of maintenance and repair costs minus the amount paid for in the first 90 months of the Lease Term.
- vi. Year 3 of the Second Sublease Renewal Term, OCHD shall pay for the first Nine Thousand Dollars (\$9,000.00) of maintenance and repair costs minus the amount paid for in the first 102 months of the Lease Term.

10. Effect; Conflicts. Except as set forth in this First Amendment, all other terms and provisions of the Sublease are hereby ratified and confirmed and shall remain in full force and effect. In the event of any conflict between the provisions of this First Amendment and the Sublease, the provisions of this First Amendment shall control.

11. Counterparts. This First Amendment may be executed in two or more counterpart copies, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this document to physically form one document.

(signature pages follow)

FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
Lease #5080

IN WITNESS WHEREOF, County and OCHD have caused this "First Amendment to Sublease Agreement" to be executed by their respective officers and parties thereunto duly authorized to be effective as of the First Amendment Effective Date.

"County"

ORANGE COUNTY, a charter county and political
subdivision of the State of Florida

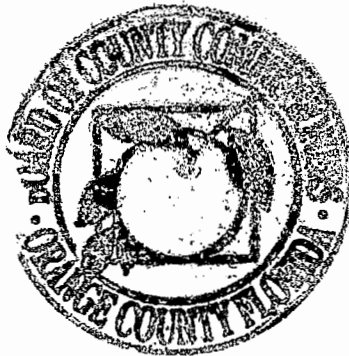
By: **Board of County Commissioners**

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: *Craig Stopyra*
for Deputy Clerk

24 February 2021
Date



FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
Lease #5080

“OCHD”

Signed, sealed and delivered
in the presence of:

ORANGE COUNTY HEALTH DEPARTMENT, a
Division of the Florida Department of Health, an agency
of the State of Florida

Witness: Lavern Simmons Lesene By: Raul Pino
Print Name: Lavern Simmons Lesene Raul Pino, M.D., M.P.H.
Witness: Alma V. Vargas Title: Administrator/Health Officer
Print Name: Alma V. Vargas Date: 1-14-2021

FDOH Emergency Storage Facility at Sunport Center - Sublease with FDOH
 Lease #5080

ATTACHMENT I

PAYMENT JOURNAL ENTRY

Agency Name	FLAIR Contract ID	Statewide Document	Agency Document Number	Vendor Name	Amount	Voucher Date
DEPARTMENT OF HEALTH	OPR02	D1000167347	V0031060001	ORANGE COUNTY BCC	\$ 455.05	10/20/2020
DEPARTMENT OF HEALTH	OPR02	D1000167347	V0031060002	ORANGE COUNTY BCC	\$ 12,755.09	10/20/2020
DEPARTMENT OF HEALTH	OPR02	D1000167347	V0031060003	ORANGE COUNTY BCC	\$ 579.15	10/20/2020
					\$ 13,789.29	