

## **STAFF REPORT**

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**DATE:** October 24, 2022

**TO:** Sacramento Regional Transit Board of Directors

**FROM:** Jamie Adelman, Acting VP, Procurement, Real Estate and Special Projects

**SUBJ:** APPROVING THE FIRST AMENDMENT TO LEASE WITH 27TH & R, LLP AND AUTHORIZING THE GENERAL MANAGER/CEO OR HIS DESIGNEE TO APPROVE TENANT IMPROVEMENT CHANGES

### RECOMMENDATION

Adopt the Attached Resolution.

### RESULT OF RECOMMENDED ACTION

Approving the First Amendment to the Lease with 27th & R, LLP will: (1) provide consideration to the Lessor for clarification of the Commencement Date and set the date at November 1, 2022; (2) include the originally-intended cost cap for Lessor's Tenant Improvements; (3) approve current Tenant Improvement costs above the cost cap; (4) establish a process for SacRT to approve or reject change orders and incur costs above and beyond the current costs; (5) clarify terms for Options to Extend; and (6) specify a process for SacRT to self-perform tenant improvements for the Lease of 2710 R St., Sacramento, CA 95816.

### FISCAL IMPACT

The original Lease terms provided for rent to commence once SacRT was able to occupy the premises, which has not yet occurred, in part due to delays on the side of SacRT in reviewing certain aspects of the tenant improvements due to staff workload. To address any issues regarding the delays and establish a fixed lease start date, SacRT will provide an additional payment of \$15,072.00 (equivalent to one month's rent) to be paid from the Fiscal Year 2023 Operating Budget. Regular rent payments of \$15,072.00 will commence November 1, 2022, which is already incorporated into the Fiscal Year 2023 Operating Budget.

In approving the original Lease, the Board was told that the Tenant Improvement allowance would be limited to \$300,000. However, this cost cap was not included in the original lease language. In part because of that omission, the Lease also has no language to address what occurs if the cost cap is reached (whether the scope of the Tenant Improvements would be reduced, whether the Lessor would stop work, how changes would be approved, how costs would be allocated, etc.). The original cost estimate from

the Lessor's contractor was \$390,983.54 and additional changes have brought the current cost to \$425,787.57. The Lessor has requested that SacRT pay for this current coverage amount and that SacRT be responsible for the costs of any additional changes. SacRT would have 5 business days to approve or reject any changes that would result in increased costs. If SacRT does not affirmatively reject the changes, SacRT will be responsible for the increased costs, creating financial risk for SacRT.

Project F041 R Street Warehouse Update has \$128,000 budgeted and funded for Tenant improvements. Approving the First Amendment would consume \$125,787.57 of these funds and possibly more if additional changes cause further cost increases. While SacRT does not currently anticipate additional Tenant Improvement costs by the Lessor, SacRT does intend to self-perform further tenant improvements that will require permitting, trenching, and fiber optic connections. Additional funding will need to be identified before the self-performed work can proceed.

## DISCUSSION

To address SacRT's need for the Facilities Maintenance Department to be centrally located, consolidate equipment, supplies and staff, and improve workspace quality, the SacRT Board authorized and directed the General Manager (GM/CEO on December 13, 2021, to negotiate price and terms to enter into a lease agreement for 2700 R Street in Midtown Sacramento.

On March 4, 2022, SacRT executed the 84-month lease with 27<sup>th</sup> & R, LLP (Lessor), paying one month's rent and deposit. The Lease called for a rent commencement date of June 1, 2022 or an agreed upon date which is no more than 15 days from completion of Tenant Improvements" and an end date of May 31, 2029. The expectation was that the Tenant Improvements would be complete June 1, 2022.

Due to delays in the Tenant Improvement work, SacRT still does not have possession of the Premises. Completion of the Tenant Improvements is now anticipated in November. These delays are attributable in part to SacRT-requested changes and review delays due to staff workload. Due to these delays and ambiguities in the Lease language (the Lessor required the use of a standard form commercial lease that was not well suited to some of these complexities), the parties desire to clarify when the Lease term will commence and end. SacRT will pay one month of additional rent as compensation for any delays from its side; the Lease term will be clearly stated to begin November 1, 2022; and the end date of the Original Term will be October 31, 2029, so that SacRT can obtain a full 84 months of occupancy.

In addition, as noted above, there are ambiguities in the Lease terms related to the cost of the Tenant Improvements. The First Amendment would address that issue in the manner discussed in the Fiscal Impact section above.

The First Amendment would also address other issues that have arisen since the Lease signing, specifically:

- (1) Allowing SacRT staff to self-perform some tenant improvement work rather than using a third-party contractor and committing the Lessor to assist SacRT in obtaining permits for that work; and
- (2) Addressing an error in the Option language in the Lease (SacRT was intended to have three 5-year options, but the Lease language reflected only two 5-year options) and establishing a process for setting the rent for any Option term.

RESOLUTION NO. 2022-10-127

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

October 24, 2022

**APPROVING THE FIRST AMENDMENT TO LEASE WITH 27TH & R, LLP AND AUTHORIZING THE GENERAL MANAGER/CEO OR HIS DESIGNEE TO APPROVE TENANT IMPROVEMENT CHANGES**

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the First Amendment to Lease by and between the Sacramento Regional Transit District (therein "Lessee") and 27<sup>th</sup> & R LLP (therein "Lessor"), whereby: (1) Lessee provides consideration to the Lessor for clarification of the Commencement Date and the Commencement Date is firmly set as November 1, 2022; (2) the originally-intended cost cap for Lessor's Tenant Improvements is included; (3) Lessee approves current Tenant Improvement costs above the cost cap in the amount of \$125,787.57; (4) a process is established for the General Manager/CEO to approve or reject change orders and incur costs above and beyond the current costs; (5) an error in the Options to Extend is corrected; and (6) a process is specified for SacRT to self-perform tenant improvements, is hereby approved.

THAT, the General Manager/CEO is hereby authorized and directed to execute the foregoing Amendment.

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STEVE MILLER, Chair

A T T E S T:

HENRY LI, Secretary

By: \_\_\_\_\_  
Tabetha Smith, Assistant Secretary