



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT:** SEE BELOW

**DATE:** October 16, 2019

Approved

Date

10/16/19

**SUBJECT: ACTIONS RELATED TO THE LEASE AGREEMENTS FOR OFFICE SPACE OCCUPIED BY THE INDEPENDENT POLICE AUDITOR**

## RECOMMENDATION

- a) Approve an Amendment to the existing Lease Agreement with 152 North Third Street Owner, LLC for the office space located at 152 N 3<sup>rd</sup> Street, Suite 602, San Jose CA to terminate the Agreement and provide for the landlord's reimbursement of costs (up to \$15,000) associated with moving from the current office space to the new proposed space located at 96 N Third Street; and
- b) Approve a five-year lease with 96 North Third Street, LLC for the use of approximately 2,298 square feet of office space located at 96 N 3<sup>rd</sup> Street, Suite 150, San Jose, CA at a rental rate of \$96,516 for the first year of the lease, \$99,549.36 for the second year, \$102,306.96 for the third year, \$105,616.08 for the fourth year, and \$108,649.44 for the fifth year, with total rent for the five-year term in the amount of \$512,637.84.

## OUTCOME

City Council approval of these actions allows for the Independent Police Auditor to move to a new office space located at 96 N 3<sup>rd</sup> Street, Suite 150, San Jose, CA and to be reimbursed for moving costs (up to \$15,000) by the existing landlord.

## BACKGROUND

The Independent Police Auditor provides review of police misconduct investigations and independent oversight of the complaint process. It strives to ensure that concerns reported by community members are classified and investigated thoroughly.

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The IPA has been occupying space at 152 N 3<sup>rd</sup> Street, Suite 602 since December 1, 2015. This lease was approved by City Council on December 1, 2015 and is set to expire November 30, 2020.

In June 2018, the owner/landlord, RPRO152N3, LLC, sold the property to 152 North Third Street Owner, LLC. On June 25, 2018, the City received a letter from the new owner's property management company, MCM Diversified, Inc., notifying the City that the property had been sold.

Under the current lease, the owner/landlord reserves the right to make alterations, repairs, or improvements to the Building. The new owners began a major renovation and construction project at the property in late January 2019. Due to the construction, there has been a significant increase in noise levels and disturbances, negatively impacting staff's work productivity and disrupting the operations of the IPA.

While the current lease does not expire until November 30, 2020, the construction project is impacting operations severely enough for staff to determine that the IPA must move to a different location. Staff negotiated with the current landlord to terminate the existing lease agreement and cover all moving expenses to a new office space.

## **ANALYSIS**

IPA operations are best suited to a location outside of City Hall and an environment that offers privacy and ease of access for members of the public. The location needs to assure members of the public that complaints and allegations against police officers will be handled confidentially and free from influence from any other part of the City organization.

Real estate staff located multiple potential sites that offer both privacy and ease of access for members of the public. These downtown locations provide excellent access to public transportation, as well as plentiful on-street and off-street parking, which is important for the IPA to provide its services to the public. The sites also provide access for the IPA Citizen Group access to private offices and conference room space for meetings and hearings, along with a confidential file storage room.

After reviewing the sites with staff from the IPA and analyzing the proposed terms for each location, staff recommends to move forward with a new Lease Agreement for office space at 96 N 3<sup>rd</sup> Street, Suite 150. This site is located on the first floor of the building and can be easily reached by visitors but has limited foot traffic, thereby allowing complaints to be registered in private. It is also still centrally located, which makes it convenient for visitors and clients and allows the IPA and staff to be near City Hall to attend meetings.

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The rental rate at the current location is \$8,063 per month until December 1, 2019, when the rental rate is scheduled to increase by 4% to \$8,385 per month. The new proposed Lease Agreement would have a starting monthly rent of \$8,043, which is lower than the current rent.

The Downtown San Jose commercial/office rental market is tightening, with fewer available office spaces and increasing rents. At the time of search in early June, asking rents for other available office spaces in the Downtown area ranged from \$3.95/SF to \$4.75/SF per month. This proposed Lease Agreement is priced at \$3.50/SF per month, which is comparatively economical.

Below are main terms of the proposed Lease Agreement:

1. **LANDLORD:** 96 North Third Street, LLC, a California limited liability company ("Landlord")
2. **PREMISES:** 96 N 3<sup>rd</sup> Street, Suite 150  
San Jose, CA 95112
3. **USE OF PREMISES:** General office use
4. **TERM:** Five (5) years with one (1) option to extend for an additional five (5) years
5. **LEASE COMMENCEMENT:** December 1, 2019
6. **RENEWAL OPTION(S):** The Lease provides that the City has the option to extend the initial Lease term for one (1) additional period of sixty (60) months at the then fair market rental rate, exercisable in writing no less than 180 calendar days prior to the expiration of the Initial Term
7. **BASE RENT:** Starting at \$3.50 per square foot per month

Year	Monthly Base Rent	Annual Escalation
1	\$8,043.00 (\$3.50 per SF)	0%
2	\$8,295.78 (\$3.61 per SF)	3%
3	\$8,525.58 (\$3.71 per SF)	3%
4	\$8,801.34 (\$3.83 per SF)	3%
5	\$9,054.12 (\$3.94 per SF)	3%

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- 8. RENT PAYMENT:** Tenant rent payment shall commence on December 1, 2019
- 9. FULL SERVICE LEASE:** Landlord shall pay for all operation expenses, maintenance, and all utilities including, but not limited to water, sewer, gas and electricity consumed within the premises and common area of premises, including the costs of utilities furnished by Landlord, if any, to the premises, whether directly assessed or reasonably allocable to Tenant.
- 10. LANDLORD'S DELIVERY:** Landlord to provide Tenant with existing eight (8) private-offices, one (1) conference room, one (1) copy room, one (1) break room, one (1) server room. Landlord to install: (a) a new reception area; (b) new glass security windows that covers the length of the reception desk; (c) a badge/lock system for the back access door; (d) the Independent Police Auditor logo on the front glass door; and (e) a sound system for the front entry door (sound activates when anyone enters). Landlord shall replace any damaged floor covering the Premises with materials similar in look and feel to the existing floor covering and perform any touch-up painting necessary as a result of Landlord's work. Landlord shall work with Tenant and its representatives to agree upon the location of data outlets to be installed by Tenant prior to commencement of Landlord's work.
- 11. DELIVERY DATE:** Landlord shall deliver the Premises for possession to Tenant on or about December 1, 2019 or upon substantial completion of any Tenant Improvements. Landlord to permit City and its vendor early access for IT, and telecommunications installation.

#### **EVALUATION AND FOLLOW-UP**

Upon City Council approval, no additional action by the City Council is anticipated until the lease term expires.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website for the October 29, 2019 Council agenda.

### **COORDINATION**

This item has been coordinated with the Offices of the Independent Police Auditor, City Attorney's Office, and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No City Commission provided input or a recommendation regarding this proposed action.

### **FISCAL/POLICY ALIGNMENT**

This item is consistent with the General Budget Principles in that it protects a vital core City service.

### **COST SUMMARY/IMPLICATIONS**

The funding for the lease payment required in 2019-2020 is included in the Property Leases City-Wide appropriation. The Office of Economic Development will work closely with the City Manager's Budget Office to ensure that the increased lease costs over the five-year period are included in the Property Leases City-Wide appropriation as part of each year's Base Budget.

<b>Estimated Start Up Cost</b>	<b>Vendor</b>	<b>Amount</b>
Rent – December 1, 2019	96 NORTH THIRD STREET, LLC	\$8,043
Security Deposit	96 NORTH THIRD STREET, LLC	\$9,055
Moving Expense		\$0
Total		<b>\$17,098</b>

Initial costs associated with relocating IPA to the private office space, which include the first month's rent and the security deposit, are approximately \$17,098 as shown above. Costs associated with the relocation (up to \$15,000) will be paid by the current landlord. Office of Economic Development staff will monitor expenditures within the Property Leases City-Wide appropriation including the cost of the move of the IPA. If there is any indication that costs will

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exceed the current appropriation, staff will return to Council at Mid-Year with an update and a request for a budget increase to offset the projected shortfall.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriations included in the 2019-2020 Proposed Operating Budget to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2019-2020 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	2064	Property Leases	\$1,660,201	N/A	IX-6	06/18/2019, 30286

### **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director of Economic Development and Director of Real Estate at (408) 535-8184.