

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Behavioral Health and Recovery Services

BOARD AGENDA # *B-2

Urgent

Routine

AGENDA DATE July 10, 2012

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Enter into a 28-Month Lease Agreement with Center for Human Services for Office Space at 631 West F Street in Oakdale and Approval to Pay Lease Obligations Incurred in a Prior Year

STAFF RECOMMENDATIONS:

1. Authorize the Purchasing Agent, on behalf of Behavioral Health and Recovery Services, to enter into a lease agreement with Center for Human Services for office space at 631 West F Street in Oakdale.
2. Authorize the Purchasing Agent to sign the lease agreement and related documentation with Center for Human Services.
3. Approval to allow the Purchasing Agent to pay lease obligations incurred in a prior year.

FISCAL IMPACT:

The monthly lease cost for this space is \$720 per month for the period March 1, 2011 through June 30, 2013. The Center for Human Services has agreed to waive the sub-lease rent for the period of March 1, 2011 through June 30, 2011. The total cost of the lease for Fiscal Year 2011-2012 and 2012-2013 is \$8,640 per year for a total of \$17,280. Funding for both fiscal years is included in the Department's 2012-2013 Adopted Proposed budget. There is no impact to the General Fund associated with this lease.

BOARD ACTION AS FOLLOWS:

No. 2012-351

On motion of Supervisor Withrow, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Prior to March 2011, Behavioral Health and Recovery Services (BHRS) collaboratively operated the Oakdale Community Care Center (OCCC) in Oakdale with the Center for Human Services. The OCCC provided counseling and medication support to children and families living in the east side of the County. BHRS out-stationed one Mental Clinician II and an extra help clerical position at this site.

As part of its Fiscal Year 2010-2011 budgeting strategy, BHRS made the decision to move the clinician back to their home base in Modesto and redirect the extra help position to another program within the Department. At the same time, the Center for Human Services (CHS) was in the process of opening a Family Resource Center in Oakdale and intended to vacate the site as well. The lease was due to expire in October, 2010; however, the landlord was open to a month-to-month arrangement while both agencies implemented their plans.

During this period, staff from both BHRS and CHS began discussing the possibility of co-locating the BHRS Clinician at the new Family Resource Center site to maintain a BHRS presence in the Oakdale area. The initial plan was for BHRS to utilize a desk at the Center at no cost on an "as needed" basis. However, as the plan evolved, an opportunity for further collaboration arose. The final arrangement included CHS providing BHRS with an office for a clinician and additional space for a BHRS Psychiatrist to hold a monthly medication clinic at the site. In addition, CHS would provide BHRS with basic clerical support and the use of CHS office equipment. Since CHS was no longer providing minimal space, an equitable sub-lease was negotiated. In exchange for full-time office space, a location for monthly medication clinics, clerical support and use of the facility equipment, BHRS would pay CHS \$720 per month.

Unfortunately, issues unrelated to the lease rate delayed execution of the agreement. CHS submitted a sub-lease agreement to the County, but questions arose as to whether or not the County could sign that agreement or needed a County-initiated document. Additionally, it was unclear if the basic and infrequent services provided by the CHS clerk required a separate agreement. After meeting with General Services Agency - Purchasing staff, it was determined that a sub-lease agreement was all that was necessary, and that the document provided by CHS, with some modifications, could be used.

Regrettably, this process has taken over a year to put into place. CHS has been providing space and services since March 1, 2011. CHS has generously offered to waive the rental fee for the period of March 1, 2011 through June 30, 2011. BHRS is requesting approval for the Purchasing Agent to sign the sub-lease effective March 1, 2011 through June 30, 2013. BHRS is also requesting approval for the Purchasing Agent to pay CHS for lease costs incurred in a prior fiscal year.

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POLICY ISSUES:

Approval of this agenda item will meet the Board's priority of A Healthy Community by providing continued access to service for children and their families in the Oakdale area.

STAFFING IMPACT:

Existing department staff is available to support this agreement.

Contact: Linda Downs, Assistant Director Telephone: 525-6225

COMMERCIAL SUBLEASE AGREEMENT

This Sublease Agreement ("Sublease") is entered as of July 1, 2012 by and between **Center for Human Services** ("Sublessor") and **Stanislaus County** for the benefit of its Behavioral Health and Recovery Services ("Subtenant"). Sublessor and Subtenant may collectively be referred to as the "Parties."

WHEREAS, Sublessor entered into a lease agreement effective January 1, 2011 between the Sublessor and Mineni Properties, L.P. ("Landlord") for a term ending on December 31, 2015 (the "Master Lease Agreement");

WHEREAS, Sublessor and Subtenant entered into negotiations regarding a reasonable compensation rate for space;

WHEREAS, Subtenant occupied the above mentioned space on March 1, 2011 pending completion of negotiations;

WHEREAS, Subtenant wishes to compensate Sublessor for the occupied space for the period of March 1, 2011 through June 30, 2012; and

WHEREAS, Sublessor and Subtenant wish to enter into this Sublease for continued use of this space for the period of July 1, 2012 through June 30, 2013.

NOW, THEREFORE, the Parties agree as follows:

PREMISES: Sublessor hereby subleases office space including: the classroom, office space, lobby and all common areas, on the premises located at: 631 West F Street Oakdale, CA 95361 (the "Premises") to Subtenant.

SUBLEASE TERM: The Sublease will begin on July 1, 2012 and will end on June 30, 2013 (Sublease Term). Either party may cancel this lease with 30 days written notice to the other party.

LEASE PAYMENTS: Subtenant agrees to pay to Sublessor as rent, including utilities, for office space located within the Premises, the amount of \$720.00 ("Rent") per month in advance on the first day of each month at: Center for Human Services 1700 McHenry Village Way, Suite 11, Modesto, CA 95350.

INSUFFICIENT FUNDS: Subtenant agrees to pay the charge of \$25.00 for each check that is returned for lack of sufficient funds.

BUSINESS TAXES: Subtenant shall pay all business taxes in respect of the business carried on in or upon the Premises.

POSSESSION AND SURRENDER OF PREMISES: Subtenant shall be entitled to possession of the Premises on the first day of the Sublease Term. At the expiration of the Sublease, Subtenant shall peaceably surrender the Premises to Sublessor or Sublessor's agent in good condition, as it was at the commencement of the Sublease, reasonable wear and tear excepted.

CONDITION OF PREMISES: Subtenant or Subtenant's agent has inspected the Premises, the fixtures, the grounds, building and improvements (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with the requirements of the Americans with Disabilities Act) and acknowledges that the Premises are in good and

acceptable condition and suitable for Subtenant's intended use. If at any time during the term of this Sublease, in Subtenant's opinion, the conditions change, Tenant shall promptly provide reasonable notice to Sublessor.

a. **Sublessor Representations:** Sublessor represents to Subtenant that (i) the Premises, the Building and all Common Areas (including electrical, heating, ventilating and air conditioning ("HVAC"), mechanical, plumbing, gas and fire/life safety systems in the Building and similar building service systems) comply with all current laws, codes, and ordinances, including the Americans With Disabilities Act; and are in reasonable good working order and condition; (ii) the Building and Premises comply with all covenants, conditions, restrictions and underwriter's requirements; and (iii) the Premises, Building and Common Areas are free of the presence of any Hazardous Materials (as hereinafter defined) and (iv) Sublessor has not received any notice from any governmental agency that the Building or the Premises are in violation of any law or regulation. Sublessor represents, based upon a professional inspection of the Premises and the Building and the Asbestos Report that the Premises and the Building contain no asbestos containing materials (other than as may be reflected in the Asbestos Report). Sublessor shall, prior to Subtenant's occupancy, abate, at Sublessor's sole cost and expense, all asbestos containing materials to the extent required by law and provide Subtenant with an updated report from a licensed California Asbestos contractor to that effect.

b. **Sublessor Obligations:** Sublessor shall, at Sublessor's own expense, keep and maintain in good repair and working order and promptly make repairs to and perform maintenance upon and replace as needed: (1) the structural elements of the Building, including without limitation, all permanent exterior and interior walls, floors and ceilings, roof, concealed plumbing, stairways, concealed electrical systems and telephone intrabuilding network cable and pest control service; (2) mechanical (including HVAC), electrical, plumbing and fire/life safety systems serving the Building; (3) the Common Areas; (4) exterior windows of the Building; and (5) elevators serving the Building. Sublessor, at its sole cost and expense, shall also perform all maintenance and repairs to the Premises, and shall keep the Premises in good condition and repair, reasonable wear and tear excepted. Sublessor repair obligations include, without limitation, repairs to: (1) the floor covering (if such floor covering is carpeting it shall be replaced as needed but not less often than after five (5) years of use); (2) interior partitions; (3) doors; (4) the interior side of demising walls (which shall be repainted as needed but not less often than every five (5) years and (5) signage.

i. **HVAC:** Sublessor shall supply cooling, ventilating and heating with capacity to produce the following results effective during Normal Working Hours established by the Sublease and within tolerances normal in comparable office buildings; maintenance of inside space conditions of not greater than 78 degrees Fahrenheit when the outside air temperature is not more than 93 degrees Fahrenheit dry bulb and 70 degrees Fahrenheit wet bulb, and not less than 70 degrees Fahrenheit when the outside air temperature is not lower than 42 degrees Fahrenheit dry bulb. Interior space is designated at a rate of one zone for approximately each 1,000 square feet and one diffuser for each 200 square feet of usable square footage within the Premises. If energy requirements prohibit Sublessor from complying with these requirements, Subtenant shall not unreasonably withhold its consent to temporary waivers or modifications.

ii. **Repair/Maintenance:** Excluding normal wear and tear, and, excluding heating and cooling equipment, Subtenant shall, at Subtenant's sole expense, be

responsible for the cost of repairing any area damaged by Subtenant or Subtenant's agents, employees, invitees and visitors and the repair of low voltage electronic, phone and data cabling and related equipment that is installed by or for the exclusive benefit of Subtenant. All repairs and replacements shall: (a) be made and performed by contractors or mechanics approved by Subtenant, which consent shall not be unreasonably withheld or delayed, (b) be at least equal in quality, value and utility to the original work or installation, (c) be in accordance with all laws.

- c. **Entry:** Subtenant shall permit Sublessor, or an authorized agent of Sublessor, free access to the premises at all reasonable times for the purpose of inspection or for making necessary improvements or repairs.
- d. **Subtenant's Right to Repair:** If Subtenant provides written notice (or oral notice in the event of an emergency such as damage or destruction to or of any portion of the Building structure and/or the Building systems and/or anything that could cause material disruption to Subtenant's business) to Sublessor of an event or circumstance which requires the action of Sublessor with respect to repair and/or maintenance, and Sublessor fails to provide such action within a reasonable period of time, given the circumstances, after the giving of such notice, but in any event not later than five (5) days after the giving of such notice, then Subtenant, at its sole option, may either proceed to take the required action (provided, however, that no such notice shall be required in the event of an emergency which threatens life or where there is imminent danger to property or a possibility that a failure to take immediate action could cause a material disruption in Subtenant's normal and customary business activities) or may surrender the premises and shall not be liable for any further lease payments under this Sublease. Subtenant shall have access to the Building to the extent necessary to perform the work contemplated by this provision. If such action was required under the terms of this Sublease to have been taken by Sublessor and was not taken by Sublessor within such period (unless such notice was not required as provided above), and Subtenant took such required action, then Subtenant shall be entitled to prompt reimbursement by Sublessor of Subtenant's reasonable costs and expenses in having taken such action. If not reimbursed by Sublessor within ten (10) days, Subtenant shall be entitled to deduct from Basic Rent payable by Subtenant under this Sublease the amount set forth in its invoice for such work.
- e. **Asbestos Notification:** In September, 1989, the Governor of California signed AB-1564, an Asbestos Notification law, codified in Section 25915 et seq. of the Health and Safety Code. Health and Safety Code Section 25915(a) states.

Notwithstanding any other provisions of the law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, shall provide notice to all employees of that owner working within the building.

Should the Sublessor know of any asbestos-containing material, Sublessor will notify Subtenant within ten (10) days.

If Subtenant suspects or has reason to believe that the premises, as described in Section 1, contains asbestos-containing material, Sublessor shall within ten (10) days of Subtenant's request supply Subtenant with an Asbestos Survey Report done by a qualified hazardous material specialist. If Sublessor fails to have requested testing done, Subtenant shall have the required testing done and all related cost shall be

deducted from the lease payment. If test is positive and abatement is necessary, Sublessor shall provide the Subtenant an Asbestos Abatement Plan within thirty (30) days.

- f. **Building Ventilation:** Premises shall comply with Title 8, Section 5142, California Code of Regulations, "Mechanically Driven Heating, Ventilating and Air Conditioning (HVAC) Systems" to provide minimum building ventilation. Provided, however, that Sublessor may terminate this Sublease should it decide that repair expenses, do not merit the continuance of this Sublease. Subtenant shall be given notice by Sublessor of said decision and notice shall provide Subtenant adequate time to make other arrangements.
- g. **CAL/OSHA Inspections:** If the premises, as described in Section 1, is cited by CAL/OSHA, Landlord shall be required to abate said citations. Provided, however, that Landlord and Sublessor may terminate this Sublease should it decide that abatement cost, do not merit the continuance of this Sublease. Subtenant shall be given notice by Sublessor of said decision and notice shall provide Subtenant adequate time to make other arrangements.

OBLIGATIONS UNDER MASTER LEASE: Subtenant acknowledges the receipt of a copy of the Master Lease, as attached hereto as Exhibit A. Subtenant agrees that all terms and conditions of the Master Lease are hereby incorporated into this Sublease except for those provisions of the Master Lease that are directly contradicted by this Sublease, in which event the terms of this Sublease shall control over the Master Lease. Furthermore, both parties will comply with the terms therein and will avoid actions or inactions that would constitute a breach or default of Sublessor's obligations in the Master Lease.

- a. **Loss:** Sublessor agrees that should the demised premises be so badly damaged by fire, incidents of war, earthquake, or other violent action of the elements as to render them wholly unfit for Subtenant's occupancy, then this Sublease shall be terminated immediately upon the happening of any such event whereupon Subtenant shall surrender the premises and shall not be liable for any further payments. In the event of any lesser damage by any such cause, Sublessor and/or Landlord shall restore the premises to the condition it was in immediately prior to the event causing the damage, and the lease payment shall abate in proportion to the area not used by Subtenant during the period of restoration. If Sublessor and/or Landlord should fail to pursue restoration work with reasonable diligence to completion, Subtenant, at its sole option may surrender the premises and shall not be liable for any further lease payments under this Sublease.
- b. **Waiver of Rights of Subrogation:** Sublessor and Subtenant agree that in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look solely to its insurance for recovery. Sublessor and Subtenant grant to each other on behalf of any insurer providing insurance to either of them with respect to the premises, a waiver of any right of subrogation which any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance.
- c. **Liability Insurance:** Subtenant agrees to hold Sublessor harmless from loss occurring on the premises and arising out of Subtenant's occupancy of the premises. Subtenant assumes no liability for any loss caused by the sole negligence of Landlord and/or Sublessor.
- d. **Indemnification:** To the fullest extent permitted by law, Sublessor shall indemnify, hold harmless and defend the Subtenant and its agents, officers and employees from

and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with Sublessor's failure to perform under the Master Lease Agreement.

SEVERABILITY: If any part or parts of this Sublease shall be held unenforceable for any reason, the remainder of this Sublease shall continue in full force and effect. If any provision of this Sublease is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

BINDING EFFECT: The covenants and conditions contained in the Sublease shall apply to and bind the parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

ENTIRE AGREEMENT: This Sublease constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Sublease. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Sublease. This Sublease may be modified in writing and must be signed by both Parties.

LACK OF FUNDING: If, during the term of this Sublease, Subtenant, Stanislaus County, in its sole discretion, determines that sufficient funds are not available to allow for continuation of this Sublease or current County owned space becomes available, Subtenant may terminate this Sublease upon sixty (60) days written notice to Sublessor without further obligation to Sublessor.

Sublessor has read and understands specifically those terms contained in the preceding paragraph.

Sublessor's Initials

INSURANCE REQUIREMENTS: Sublessor shall take out and maintain during the life of this Sublease insurance policies and coverage at least as broad as follows:

- a. Commercial General Liability with a combined Bodily Injury and Property Damage limit of not less than TWO Million (\$2,000,000.00) dollars per occurrence and THREE Million (\$3,000,000) Dollars in the aggregate. The aggregate must be applicable on a per project basis. Coverage must include the following perils:
 - i. Broad Form Blanket Contractual Liability for liability assumed under this Sublease;
 - ii. Completed Operations/Products Liability;
 - iii. Broad Form Property Damage;
 - iv. Personal and Advertising Injury Liability;
 - v. Independent Contractors;
 - vi. Waiver of subrogation in favor of Sublessor;
 - vii. Endorsements must be furnished naming Sublessor as an Additional Insured on a primary and noncontributing basis;
 - viii. Coverage is to be endorsed to reflect that insurance is to be primary and non-contributory with respect to any other collectable insurance, for Sublessor and all other parties required to be named as additional insureds;
 - ix. Coverage is to be provided on an "occurrence" basis with carriers licensed and admitted to do business in the State of California or otherwise acceptable to Sublessor.

- x. A copy of endorsement(s) or other documents required to verify such insurance are to be submitted with the appropriate certificate(s), or upon the request of Sublessor. Failure to provide these documents is not to be construed as a waiver of the requirements to provide such insurance.

- b. Commercial Automobile Liability Insurance covering the use of all Owned, Non-Owned, and Hired Vehicles with combined Bodily Injury and Property Damage Limit of at least TWO Million (\$2,000,000.00) Dollars. A waiver of subrogation will be required in favor of Sublessor.

GOVERNING LAW: This Sublease shall be governed by and construed in accordance with the laws of the State of California.

NOTICE: Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to the other party in person, by the United States mail, certified or registered, postage prepaid, return receipt requested, or by fax or email. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five days after deposit thereof in the United States mail.

Sublessor Information:

Contact: **Joyce Ayres**
Address: 1700 McHenry Village Way, #11
Modesto, California 95350
Telephone Number: (209) 526-1476
Fax Number: (209) 526-0908
Email: jayres@centerforhumanservices.org

Program Contact: **Lori Schumacher**
Address: 1700 McHenry Village Way, #11
Modesto, California 95350
Telephone Number: (209) 526-1476
Fax Number: (209) 526-0908
Email: lschumacher@centerforhumanservices.org

Subtenant Information:

Contact: **Stanislaus County Purchasing Agent**
Sublessor's Address: 1010 10th Street, Suite 5400
Modesto, CA 95354
Telephone Number: (209) 525-6319
Fax Number: (209) 525-7787
Email: GSA_Purchasing@stancounty.com

WAIVER: The failure of either party to enforce any provisions of this Sublease shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Sublease. The acceptance of rent by Sublessor or Landlord does not waive Sublessor's right to enforce any provisions of this Sublease.

LEGAL FEES: In the event of any legal action by the parties arising out of this Sublease, the losing party shall pay the prevailing party reasonable attorneys' fees and costs in addition to all other relief.

ADDITIONAL PROVISIONS (Specify "none" if there are no additional provisions)

1. Subtenant must provide Sublessor with proof of professional and general liability insurance.
2. Subtenant must provide Sublessor with proof of a current business license.
3. Subtenant agrees to hold Sublessor harmless for safety of Subtenant when on premises outside Sublessor's normal business hours.
4. Subtenant agrees to hold Sublessor harmless for theft or loss of any personal items left at premises.
5. As to obligations between Landlord and Sublessor, the Master Lease Agreement takes precedence over this Commercial Sublease Agreement. Landlord makes no further

warranties about the building or its condition than are expressed in the Master Lease Agreement. The requirements of the Commercial Sublease Agreement that are in addition to those requirements in the Master Lease Agreement are imposed upon the Sublessor.

IN WITNESS WHEREOF, the parties or their duly authorized representatives have caused this Sublease to be executed the day and year first above written.

SUBLESSOR:

CENTER FOR HUMAN SERVICES

By: *Cindy Duenas*
Cindy Duenas, Executive Director

SUBTENANT:

STANISLAUS COUNTY

By: *[Signature]*
Keith D. Boggs, Assistant Executive
Officer, GSA Director/Purchasing Agent

APPROVED: BOS Resolution # 2012-351

APPROVED AS TO FORM:

John Doering, County Counsel

By: *Vicki Fern de Castro*
Vicki Fern deCastro, Deputy County
Counsel

APPROVED AS TO CONTENT:

Behavioral Health & Recovery Services

By: *[Signature]*
for Madeline Schlaepfer, Director

LANDLORD APPROVAL OF SUBLEASE:

Mineni Properties, L.P.

By: *William P Mineni*
William Mineni