

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

DEPT: Public Works *MM*

BOARD AGENDA # *B-9

Urgent

Routine

AGENDA DATE December 14, 2010

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Authorize the Chief Executive Officer to Sign Lease Agreements with the City of Modesto in Regards to Third and Fourth Floor Office Space at Tenth Street Place

STAFF RECOMMENDATIONS:

Authorize the Chief Executive Officer to sign lease agreements with the City of Modesto in regards to third and fourth floor office space at Tenth Street Place.

FISCAL IMPACT:

The current annual cost of the fourth floor space that County Public Works will be assuming is \$3,790.80. The annual cost of the third floor space being leased to the City of Modesto Community and Economic Development Department is \$73,559.52. These amounts include debt service and operations and maintenance costs. The lease agreements are for a five year period, with two, five year options to renew. The lease costs will be adjusted annually based on budgeted operations and maintenance for Tenth Street Place and debt service costs. Funding is included in the Public Works budget and there is no General Fund cost associated with this request.

BOARD ACTION AS FOLLOWS:

No. 2010-753

On motion of Supervisor O'Brien Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

Authorize the Chief Executive Officer to Sign Lease Agreements with the City of Modesto in Regards to Third and Fourth Floor Office Space at Tenth Street Place

DISCUSSION:

On July 13, 2010, the Board accepted Public Works Master Plan/Needs Assessment for the Department's Morgan Road location. A preliminary step in the implementation of the plan was the consolidation of the majority of department staff to Public Works' Morgan Road location. The move resulted in unused space on the third floor of Tenth Street Place, formerly occupied by Public Works' Administration and Engineering Divisions. Public Works Transit and a small Development Services component remain at Tenth Street Place (fourth floor). To accommodate the County Development Services staff on the fourth floor, the County had need of an additional 216 square feet of space.

In order to make the move financially feasible, the Department had to locate a tenant to take over their third floor Tenth Street Place space. At approximately the same time, the City of Modesto's Community and Economic Development Department, then located on the fourth floor, identified a need for 4,442 square feet of additional space.

Discussion between County and City staff resulted in the solution to lease the respective space; 4,442 square feet of third floor space to the City of Modesto and 216 square feet of fourth floor space to Stanislaus County Public Works.

The July 13, 2010 agenda item authorized the Director of Public Works to negotiate a memorandum of understanding with the City of Modesto for Tenth Street Place office space. In further discussion with legal counsel, it was identified that a lease agreement would be more appropriate. The negotiations have been completed and the lease agreements are attached as Exhibits A and B. The lease agreements were presented to and approved by the Modesto City Council on December 7, 2010. The proposal was also presented to and approved by the Tenth Street Place Management Committee on October 21, 2010.

The term of the agreement is a total of fifteen (15) years; three 5-year increments from 2010 through 2025. Either party may terminate the agreement by providing notice no later than 24 months prior to the end of each 5 year period. This will provide adequate time for arrangements to be made by both parties for the vacating or taking over of space. Financial terms provide for the full recovery of operations and maintenance costs, and debt service costs, associated with the leased space. These costs are to be adjusted annually based on the Tenth Street Place budget and corresponding debt service.

The space solutions identified result in annual net operating savings to the Department. The terms of the lease ensure that, should the need arise; the County has the ability to resume use of the space.

Authorize the Chief Executive Officer to Sign Lease Agreements with the City of Modesto in Regards to Third and Fourth Floor Office Space at Tenth Street Place

POLICY ISSUES:

This action is consistent with the Board's priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Matt Machado, Public Works Director. Telephone: 209-525-4130.

DH:lc
H:\Diane\2010 Board Items\Tenth Street Place Lease - 12.14.10

AGREEMENT REGARDING
OFFICE SPACE AT TENTH STREET PLACE

This Agreement is made and entered into this 7th day of December, 2010, by and between the City of Modesto Community & Economic Development Department (hereinafter referred to as "City"), and Stanislaus County (hereinafter referred to as "County").

WHEREAS, City has need for 4,442 square feet of additional office space at Tenth Street Place ("Premises"), and;

WHEREAS, County has excess, available office space at Tenth Street Place;

NOW THEREFORE, the Parties hereby mutually agree as follows:

1. Term: This Agreement shall commence as of July 1, 2010, and continue until June 30, 2015, and shall continue for two successive 5 year periods, unless terminated, for a total of 15 years.
2. Termination: Any Party can terminate this Agreement by providing written notice of intent to terminate to the other Party no later than 24 months prior to the end of each 5 year period. For example, during the first 5 year term, the notice of intent to terminate shall be provided no later than June 30, 2013. During the second 5 year term, notice of intent to terminate shall be provided no later than June 30, 2018. The advance notice is intended to give the Parties sufficient time to make arrangements to vacate/take over the subject office space at Tenth Street Place.
3. Compensation: City shall pay County for the lease of 4,442 square feet of third floor office space at Tenth Street Place in accordance with the fee schedule set forth in Exhibit A.
4. Assignment and Subletting: City shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer any portion of the Premises or its interest in this Agreement without County's prior written consent. Any attempted Transfer without

County's consent shall be void and shall constitute a material breach of this Agreement. As used herein, the term "transfer" includes an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy any part of the Premises by anyone other than Lessee.

5. **Notices:** Any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

County: Stanislaus County Public Works Department
Attn: Matt Machado, Director
1716 Morgan Road
Modesto, CA 95354

City: Community & Economic Development Department
Attn: H. Brent Sinclair, AICP, Director
P. O. Box 642
1010 Tenth Street, Suite 3300
Modesto, CA 95353

6. **Modification Only in Writing:** The terms and conditions of this Agreement may be changed or modified only by the mutual written consent of the Parties. Any amendment must be in writing and expressly state that is amending this Agreement. The Parties further agree that they will negotiate in good faith with regard to any changes or modifications of this Agreement sought by either Party.
7. **No Waiver:** Failure to enforce any provision will not constitute a waiver.

8. Entire Agreement: This Agreement contains the entire Agreement of the Parties, and no representations, inducements, promises, or agreements otherwise between the Parties, not embodied herein, or incorporated herein by reference shall be of any force or effect.
9. Severability: If any portion of this Agreement or application thereof to any person or circumstances shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state or county statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of the Agreement are severable.
10. Successors and Assigns: This Agreement shall be binding on and enforceable by and against the Parties to it and their respective heirs, legal representatives, successors and assigns.
11. Duplicate Counterparts: This Agreement may be executed in any number of counterparts, and each such counterpart, executed telecopy, fax or photocopy shall be deemed to be an original instrument, but all of which together shall constitute one or the same Agreement.
12. Agreement to Perform Necessary Acts: Each party to this Agreement agrees to perform any further acts and execute and deliver any documents that may be necessary to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and

through their respective authorized officers: Approved by the City Council and attested by the City Clerk on December 7, 2010, by Resolution No. 2010-500.

CITY OF MODESTO,
a municipal corporation

COUNTY OF STANISLAUS

By 

GREG NYHOFF, City Manager

By 

RICHARD ROBINSON, Chief
Executive Officer

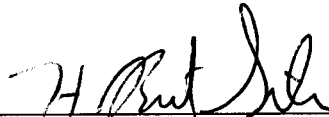
ATTEST:

By 


STEPHANIE LOPEZ, City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO CONTENT:

By 


H. BRENT SINCLAIR, AICP
Director of Community & Economic
Development Department

By 

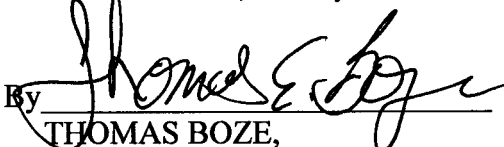
MATT MACHADO,
Director, Public Works

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

APPROVED AS TO FORM:
JOHN DOERING, County Counsel

By 

ROLAND R. STEVENS,
Assistant City Attorney

By 

THOMAS BOZE,
Deputy County Counsel

Exhibit "A"

Fee Schedule

1. Compensation

1.1 Compensation for Fiscal Year 2010-2011 shall be as follows:

Maintenance & Operations:	\$ 5.40 square foot
Debt Service:	<u>\$11.16 square foot</u>
Total	\$16.56 square foot

Total Cost: 4,442 sq ft x \$16.56 per sq ft= \$73,559.52

1.2 Payment for Fiscal Year 2010-2011 shall be made no later than 30 days from ratification of this Agreement.

1.3 Compensation for each subsequent fiscal year shall be adjusted to reflect actual Maintenance and Operations costs as reflected in the Tenth Street JPA budget, and Tenth Street Place actual debt service costs (1998 Series A-Public Administration Center, 10th Street Place). County Public Works Assistant Director/Business will contact Auditor's Department, General Ledger Division, for Operations and Maintenance, and Debt Service costs by July 1 of each succeeding year and provide updated costs and an invoice to City of Modesto, Accounts Payable division, By July 15.

1.4 Payment for the each following fiscal year shall be made no later than July 31st.

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WHEREAS, County has need for 216 square feet of additional office space at Tenth Street Place, ("Premises") and;

WHEREAS, City has excess, available office space at Tenth Street Place,

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3. Compensation: County shall pay City for the lease of 216 square feet of fourth floor office space at Tenth Street Place in accordance with the fee schedule set forth in Exhibit A.
4. Assignment and Subletting: County shall not voluntarily or involuntarily assign, sublease, mortgage, encumber, or otherwise transfer any portion of the Premises or its interest in this Agreement without City's prior written consent. Any attempted Transfer without City's

consent shall be void and shall constitute a material breach of this Agreement. As used herein, the term "transfer" includes an arrangement (including without limitation management agreements, concessions, and licenses) that allows the use and occupancy any part of the Premises by anyone other than Lessee.

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9. Severability: If any portion of this Agreement or application thereof to any person or circumstances shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state or county statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of the Agreement are severable.
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

CITY OF MODESTO,
a municipal corporation

By 
GREG M. HOFF
City Manager

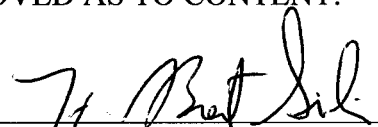
COUNTY OF STANISLAUS

By 
RICHARD ROBINSON
Chief Executive Officer


ATTEST:

By 
STEPHANIE LOPEZ
City Clerk


APPROVED AS TO CONTENT:

By 
H. BRENT SINCLAIR, AICP
Director of Community & Economic
Development

APPROVED AS TO CONTENT:

By 
MATT MACHADO
Director, Public Works

APPROVED AS TO FORM:
SUSANA ALCALA WOOD
City Attorney

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ROLAND R. STEVENS
Assistant City Attorney

APPROVED AS TO FORM:
JOHN DOERING
County Counsel

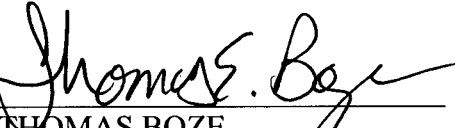
By 
THOMAS BOZE
Deputy County Counsel

Exhibit "A"

Fee Schedule

1. Compensation

1.1 Compensation for Fiscal Year 2010-2011 shall be as follows:

Maintenance & Operations:	\$ 5.40 square foot
Debt Service:	<u>\$12.15 square foot</u>
Total	\$17.55 square foot

Total Cost: 216 sq ft x \$17.55 per sq ft= \$3,790.80

1.2 Payment for Fiscal Year 2010-2011 shall be made no later than 30 days from ratification of this Agreement.

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1.4 Payment for the each following fiscal year shall be made no later than July 31st.