

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

DEPT: University of California Cooperative Extension

BOARD AGENDA # *B-23

Urgent

Routine

AGENDA DATE June 28, 2011

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Enter Into An Agreement Between The Stanislaus County University of California Cooperative Extension and Audubon California For Use of a Workstation Space within the University of California Cooperative Extension Office at 3800 Cornucopia Way

STAFF RECOMMENDATIONS:

Authorize the General Services Agency Interim Director/Purchasing Agent to execute a month-to-month agreement with Audubon California for the use of a workstation within the University of California Cooperative Extension at 3800 Cornucopia Way. This month-to-month agreement would automatically renew for up to sixty months.

FISCAL IMPACT:

If approved, approximately \$2,000 of rental revenue will be generated annually. Audubon California will pay the University of California Cooperative Extension \$166.67 monthly for use of the workstation area. The term shall be month-to-month for up to sixty months, with provisions to terminate by either party upon sixty days written notice. This additional revenue will be budgeted accordingly as part of the proposed budget process.

BOARD ACTION AS FOLLOWS:

No. 2011-403

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa
and approved by the following vote,

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

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.

Approval To Enter Into An Agreement Between The Stanislaus County University of California Cooperative Extension and Audubon California For Use of a Workstation Space within the University of California Cooperative Extension Office at 3800 Cornucopia Way

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DISCUSSION

The Audubon's mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity.

For more than a century, Audubon has built a legacy of conservation success by mobilizing the strength of its network of members, Chapters, Audubon Centers, State offices and dedicated professional staff to connect people with nature and the efforts to protect it.

The proposed Stanislaus County location will serve the San Joaquin Valley area. This agreement would allow Audubon California to occupy a dedicated workstation within currently unoccupied space in the existing University of California Cooperative Extension office at 3800 Cornucopia Way, Modesto. The proposed workstation space would be rented in "as is" condition for dedicated use by Audubon California. The agreement will include minimal use of shared space and facilities (conference room and public counter) as agreed upon by University of California Cooperative Extension. The agreement will also include utilities and maintenance, including electricity, gas, water, sewer, refuse and janitorial services. Telephone and data services will be the responsibility of Audubon California by a separate service agreement with Stanislaus County Strategic Business Technology.

The Stanislaus County office of Cooperative Extension has experienced a decline in space needs leaving a few offices and workstations vacant. The proposed month-to-month lease will allow the University of California Cooperative Extension to offset the cost of maintenance and operations of the space while providing an enhanced community benefit to the public. Should the University of California Cooperative Extension office require additional space in the future, this agreement with Audubon California could be terminated upon 60 days written notice. No other potential use of the space by Stanislaus County has been identified.

POLICY ISSUE

Approval of this agreement supports the Board of Supervisors' priorities of A Strong Agricultural Economy/Heritage and Effective Partnerships.

STAFFING IMPACT

There are no staffing issues associated with this item. Existing University of California Cooperative Extension staff will administer this Agreement.

CONTACT PERSON:

Roger Duncan, Interim County Director, University of California Cooperative Extension
(209) 525-6800

BOARD OF SUPERVISORS

2011 JUL 27 P 11 17
AGREEMENT FOR USE OF OFFICE SPACE
Between
County of Stanislaus, California
University of California Cooperative Extension
and
Audubon California

This Agreement is made and entered into as of June 28, 2011 by and between the County of Stanislaus ("Lessor") and Audubon California ("Lessee").

For and in consideration of the covenants, conditions, agreements, and stipulations hereinafter expressed, Lessor does hereby demise and lease unto Lessee, and Lessee hereby hires from Lessor one partitioned workstation within the University of California Cooperative Extension office located at 3800 Cornucopia Way, County of Stanislaus, State of California (the "leased premises"), and in addition, non-exclusive use of adjoining building common areas.

The parties hereto agree as follows:

1. **TERM.** This month-to-month lease agreement shall commence on July 10, 2011.
2. **RENTAL.** Rental for the lease of the leased premises shall be One Hundred Sixty Six and 67/100 Dollars (\$166.67) payable on the tenth (10th) day of each month commencing on July 10, 2011. Rental payment shall be made to: Stanislaus County as described in Section 27 "Notices/Payments."
3. **USE.** Said premises shall be used by Lessee during the term of this Lease Agreement solely for the purpose of offices for Audubon California employees and visitors. Any other use of the space must be approved in writing by the Lessor. Lessee shall coordinate use of the public/visitor counter, conference rooms and all other shared use spaces with the Stanislaus County University of California Cooperative Extension department. This lease agreement does not entitle the lessee to usage of office supplies, the copier, printer or other office equipment. Arrangements for use of office equipment may be made available under a separate agreement with the University of California Cooperative Extension.
4. **EXPIRATION AND TERMINATION OF AGREEMENT.** This agreement shall remain in effect for a period of five (5) years on a month-by-month basis. The agreement shall automatically renew on the first day of each month following the effective date of this agreement until the last day of June 2016 unless written notification of termination by either the Lessee or Lessor is provided. Written notification of termination must be provided by either party not less than sixty (60) days prior termination of the lease.

5. **UTILITIES AND SERVICES.** Lessor shall pay for water, sanitary sewer, electricity, gas, and refuse collection to the leased premises. Janitorial services shall be provided by the Lessor or the Lessor's vendor. Telephone and data services shall be the sole responsibility of the Lessee per paragraph 5, below.

6. **TELEPHONE AND DATA SERVICES.** Landline telecommunications and data services shall be the responsibility of the Lessee per a separate agreement with Stanislaus County Strategic Business Technologies (SBT).

7. **RESTRICTIONS ON USE.** Lessee agrees that it will abide by the following restrictions on its use of the premises:

a. Lessee's public hours of operation shall be limited to 7:00 a.m. through 5:00 p.m. Monday through Friday, except County holidays.

b. Lessee shall be entitled to park two (2) employee vehicles and up to five visitor vehicles within the County parking lot at the Agriculture Center. No overnight parking shall be permitted.

c. All use/disposal/keeping of hazardous substances is prohibited without the prior express written approval of Lessor.

8. **REPAIR - MAINTENANCE.** Lessee shall be responsible for the acquisition and maintenance of all equipment necessary to operate its business. Lessee agrees to maintain the leased premises in a safe, clean and sanitary manner. Lessor shall be responsible for maintenance and necessary repairs to the building.

9. **IMPROVEMENTS.** Lessee understands that no improvements to or upon the premises may be made without the prior written consent of Lessor further understands that any approved improvements will be done at the sole cost and expense of Lessee. Lessee agrees not to permit any liens to be placed upon said premises by reason of any improvements which they may make thereon and further agree to hold Lessor harmless from any liability or liens therefor.

10. **RIGHT OF ENTRY UPON PREMISES.** Lessor and its agents and employees shall have the right to enter upon said premises at all reasonable times to inspect the same, to determine if Lessee is performing the covenants of this Lease Agreement on its part to be performed and to post such reasonable notices as Lessor may desire to protect its rights.

11. **EMERGENCIES.** If any emergency arises in or about the demised premises, Lessee agrees to promptly take whatever remedial action may be appropriate and feasible and promptly notify Lessor, or the Modesto Police Department or emergency services of the existence of such emergency and the remedial action taken.

12. **ASSIGNMENT BY LESSEE.** Lessee shall not assign this Lease Agreement nor any right hereunder, nor sublet the premises, nor any part thereof, or allow any other person or entity to occupy or use the said premises or any portion thereof whether through direct assignment, subletting, occupation or use by another person or entity. Any such assignment, subletting and occupation or use by any other person or entity shall be void, and shall at the option of Lessor, terminate this Lease Agreement. This Lease Agreement shall not, nor shall any interest therein, be assignable, as to the interest of Lessee by operation of law, without the prior written consent of Lessor.

13. **INSURANCE.** Lessor shall keep the leased premises, excluding personal property of the Lessee, insured against losses by fire and other perils to the extent covered within Lessor's insurance policies, except that Lessee agrees to reimburse Lessor for any such losses caused by, or arising out of Lessee's use, occupancy or operation of the leased premises and not covered under Lessor's insurance policies, including deductible amounts. Lessee further agrees to reimburse Lessor for any such losses caused by, or arising out of Lessee's use, occupancy or operation of the leased premises for which the Lessee may be held legally obligated to pay.

14. **LIABILITY INSURANCE.** Lessee agrees to provide and keep in full force and effect throughout the term of this Lease Agreement a policy of insurance, covering any and all claims for injury, sickness and disease, including death therefrom, to any/all persons and damage to property, arising out of Lessee's use of, occupancy of, or occurring on the leased premises, in amounts acceptable to Lessor. Upon commencement of this Lease Agreement a certificate evidencing said insurance shall be filed with Lessor. Said certificate of insurance shall be in a form acceptable to Lessor. Lessee further agrees that the amount of insurance required may from time to time be adjusted by Lessor and Lessee agrees to file a new insurance certificate with Lessor evidencing the new amounts after a thirty (30) day written notice from Lessor's Risk Manager requiring him to do so.

15. **WORKERS' COMPENSATION INSURANCE.** Lessee shall maintain Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Lessee certifies under section 1861 of the Labor Code that the Lessee is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Lessee will comply with such provisions before commencing the performance of the work of this Agreement. Upon commencement of this Lease Agreement a certificate evidencing said insurance shall be filed with Lessor.

16. **INDEMNIFICATION.** Lessee agrees to indemnify, defend and hold the Lessor and its officers, agents, volunteers and employees free and harmless from and against any and all liabilities, claims, demands, actions, losses, damages or costs, including all costs of defense thereof that result in bodily injury and/or property damage

caused by, arising out of, or in any way related to Lessee's use or occupancy of the leased premises, or occurring on the leased premises during the term of this Lease Agreement. Upon demand Lessee shall, at its own expense, defend Lessor and its officers, agents, volunteers and employees against all such liabilities, claims, demands, actions, losses, damages or costs.

17. **TERMINATION BY LESSOR PRIOR TO EXPIRATION.** Lessor shall have the right to immediately terminate this Lease Agreement, in whole or in part, on the occurrence of any of the following events:

- a. Failure on the part of Lessee to pay rent when due, unless such failure is corrected within a fifteen (15) day period.
- b. Filing by or the final adjudication of Lessee of any petition in bankruptcy or the making of any transfer of general assignment for the benefit of creditors which has not been previously authorized by Lessor.
- c. The failure of Lessee to perform substantially or keep or observe any of the terms, covenants, and conditions which they are obligated to perform, keep or observe under this Lease Agreement after the expiration of a fifteen (15) day period of warning or ultimatum given by the Lessor to Lessee to correct any such deficiency or default.
- d. The abandonment of the leased premises or any portion thereof. Should this occur, Lessor shall not be responsible for the custodial protection of personal property abandoned, even though it may be necessary for Lessor to remove same from the leased premises for storage or disposal.

18. **TAXES.** Lessee recognizes and understands that this Lease Agreement may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes on such interest. Lessee further agrees to pay, without the right to deduct from rental fees provided herein, any and all property taxes, if any, assessed during the term of this Lease Agreement against Lessee's possessory interest in the lease premises.

Lessee further agrees to pay, without right to deduct from rental fees provided, herein, any and all personal property taxes assessed against its property on said leased premises and such portion of any real property taxes as may be levied against improvements owned by Lessee and erected upon property owned by Lessor.

19. **DAMAGE TO PREMISES.** If said premises are so damaged by fire or from any other cause as to render it untenable, then either party shall have the right to terminate this Lease Agreement as of the date on which such damage occurs, through written notice to the other party, to be given within fifteen (15) days after the occurrence of such damage; except that should such damage or destruction occur as

the result of the abuse or negligence of Lessee or its invitees, so as to render said premises untenable, Lessor only shall have this right of termination.

20. **COMPLIANCE WITH LAWS.** Lessee shall not do or suffer to be done on or about the leased premises anything that would or does violate or conflict with any applicable law, ordinance, rule, regulation or agreement which is now in force or effect or which may hereafter be enacted or adopted by federal, state, county or municipal authority.

21. **FAILURE TO VACATE.** Lessee agrees to vacate the premises upon termination of this Lease Agreement, and failing to vacate as herein provided, agrees that Lessor, or its authorized agents, may enter upon said property and remove all personal property therefrom and in this event, Lessee waives any and all claims for damages against Lessor, its agents or employees. Nothing herein shall be deemed a waiver of any rights of Lessor to demand and obtain possession of said premises in accordance with law in the event of a violation on Lessee's part of any of the terms or conditions hereof.

22. **COPARTNERSHIP DISCLAIMER.** It is mutually understood and agreed that nothing in this Lease Agreement is intended or shall be construed as in any wise creating or establishing the relationship of copartners between the parties hereto, or as constituting Lessee as an agent or representative of Lessor for any purpose or in any manner whatsoever.

23. **NONWAIVER.** Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

24. **ATTORNEY'S FEES.** In the event that either party hereto shall commence any legal action or proceeding against the other by reason of the alleged failure of the other to perform any term, covenant, or condition of this Lease Agreement by him/her to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fee on appeal if any. As used herein, "the party prevailing" means the party in whose favor final judgment is rendered and "legal action or proceeding" includes arbitration.

25. **TIME OF ESSENCE, BINDING UPON HEIRS, ETC.** Time is of the essence of each and all the terms and provisions of this Lease Agreement and the terms and provisions of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

26. **NUMBER AND GENDER.** All words used herein in the singular number shall include the plural and the present tense shall include the future and the masculine gender shall include the feminine and neuter.

27. NOTICES/PAYMENTS. All notices shall be addressed as follows:

TO LESSOR:

County of Stanislaus
Chief Executive Office
P.O. Box 3404
Modesto, CA 95353-3404
(209) 525-6333

TO LESSEE:

Audubon California
765 University Avenue, Suite 200
Sacramento, CA 95825
(916) 649-7600 ext. 113

With a Copy to:

U. C. Cooperative Extension
3800 Cornucopia Way, Suite A
Modesto, CA 95358
(209) 525-6800

Payments should be addressed (if by mail) as follows:

Stanislaus County Auditor-Controller
Attn: Revenue Division
P. O. Box 770
Modesto, CA 95353-0770

Or in person at: Stanislaus County Auditor-Controller
Attn: Revenue Division
1010 10th Street, Suite 5100
Modesto, CA 95354

Please indicate on payments "Deposit into Cooperative Extension at Fund 0100, Org 0021100, Account 18000."

28. SEVERABILITY. If any portion of this Lease Agreement or application thereof to any person or circumstance 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 this Agreement are severable.

29. AMENDMENT. This Lease Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

30. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or

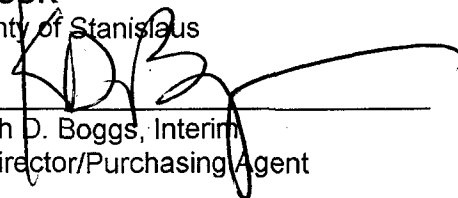
agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

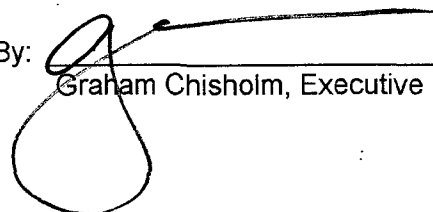
31. **ADVICE OF ATTORNEY.** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

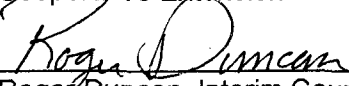
32. **CONSTRUCTION.** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

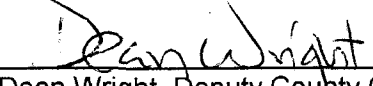
33. **GOVERNING LAW AND VENUE.** This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

LESSOR
County of Stanislaus
By: 
Keith D. Boggs, Interim
Director/Purchasing Agent

LESSEE
National Audubon Society
By: 
Graham Chisholm, Executive Director

APPROVED AS TO CONTENT:
Cooperative Extension
By: 
Roger Duncan, Interim County Director

APPROVED AS TO FORM:
By: 
Dean Wright, Deputy County Counsel

LANDLORD'S CERTIFICATION

Pursuant to the USA Patriot Act

Landlord Name ("Landlord"): **County of Stanislaus**

Address: **P.O. Box 3404, Modesto, CA 95353-3404**

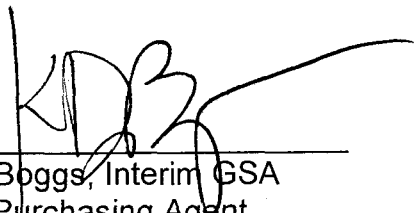
Premises to be Rented: **One workstation at:
University of California
Cooperative Extension
3800 Cornucopia Way, Suite A
Modesto, CA 95358**

Landlord certifies to National Audubon Society, Inc. ("Audubon") that Landlord and Landlord's key employees and/or board members 1) have not provided, and will take all reasonable steps to ensure that they do not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts; and 2) do not appear on lists of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury's Office of Foreign Assets Control (OFAC) (available online at <http://www.treas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf>) or of persons designated by the United Nations Security (UNSC) sanctions committee as linked to the Taliban, Usama bin Laden, or the Al Qaida Organization.

Landlord acknowledges that Audubon is relying on the certification provided hereby to ensure Audubon's compliance the USA Patriot Act (Pub. L. No. 107-56).

Date: June 28, 2011

County of Stanislaus

By: 
Keith D. Boggs, Interim GSA
Director/Purchasing Agent