

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

DEPT: Health Services Agency *ma*

BOARD AGENDA # *B-2

Urgent

Routine

AGENDA DATE September 18, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into a Five-Year Lease Agreement for the Property Located at 1620 Cummins Drive in Modesto, California to Accommodate the Health Services Agency Modesto Operation of the Women, Infants and Children's Program

STAFF RECOMMENDATIONS:

Authorize the Purchasing Agent to enter into a five-year lease agreement on behalf of the Health Services Agency for the property located at 1620 Cummins Drive, Modesto, CA to accommodate the Modesto operation of the Women, Infants and Children's (WIC) Program.

FISCAL IMPACT:

The Fiscal Year 2012-2013 Budget of the Health Services Agency (HSA) Public Health division is approximately \$25,400,000 of that, approximately \$3.8 million is attributable to the WIC program, which is funded by the US Department of Agriculture and passed through the State.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-479

REMOVED FROM THE AGENDA. NO ACTION TAKEN.

FISCAL IMPACT (Continued):

The term of the lease is for a total of 60 months. Occupancy to occur approximately 90 days after the Board Order is signed and construction is complete. The annual cost of the lease is \$118,800 per year for the first 30 months, and \$122,364 per year for the balance of the term. The County will have the option to renew this lease for a five-year period.

The lease costs and costs to move will be funded by the WIC program funding.

As the Community Services Agency (CSA) would absorb the space currently occupied by the WIC program, CSA budgeted \$66,667 in the Fiscal Year 2012-2013 budget to support their usage of the current WIC location at 251 E. Hackett Road. This amount is 2.6268% of the total Community Services Facility building costs that include rent, utilities, building maintenance, security, janitorial, and landscaping costs.

There is no cost to the General Fund.

DISCUSSION:

The Women, Infants, and Children's (WIC) Program is funded by the U.S. Department of Agriculture for eligible pregnant, breastfeeding, and postpartum women, infant 0-12 months, and children under the age of five (5) who are determined to be a nutritional risk. The program provides nutrition education and supplemental food in the form of printed checks, which participants can exchange for specified foods from over 120 authorized vendors in the County. The program also serves as a gateway and an adjunct to ongoing health care, which is essential to the WIC population.

The goals of the WIC Program are:

1. Decrease the prevalence of low birth weight infants,
2. Reduce pregnancy complications
3. Reduce iron deficiency anemia in women, infants, and children, and
4. Promote optimum growth and development of infants and young children.

The Health Services Agency WIC Program has provided services, through various Modesto sites to eligible clients in the Modesto area for over 25 years. The current Modesto WIC site has been co-located in the Community Services Facility (CSF) building, on the second floor on 251 E. Hackett Road since 2006 and occupies approximately 7,000 square feet. This WIC site is the largest and currently approximately 8,000 – 10,000 individuals are provided services on a monthly basis. Unfortunately, this has resulted in parking problems due to the high volume of clients. Additionally, the one small elevator often requires service and is unavailable for use. The Community Services Agency (CSA) has experienced growth and needs additional space for new staff. There is no additional space in CSA to accommodate the new

staff. HSA and CSA have collaborated on this space planning project and to fulfill the continuing need of our mutual clients, have developed plans to locate up to two CSA staff members in the proposed new WIC office.

WIC staff has located a facility in Modesto on Cummins Drive that will adequately meet the space and parking needs for WIC clients. This space, located at 1620 Cummins Drive, is in close proximity to the center of two designated high-need areas where the State has identified currently active and potentially eligible participants. The building has approximately 10,000 square feet, which will accommodate 20 separate and private counseling and interview cubicles, 10 offices for supervisors, a large classroom for general classes, a private space for breastfeeding and adequate storage space. The proposed location has adequate space for parking, and is in close proximity to a bus stop on Blue Gum Avenue.

The proposed lease provides for an initial five-year term with the option of a five-year extension. The lease includes the right for early termination upon a 120-day prior written notice to the landlord in the event sufficient funding is not available. The full cost of the proposed leased space is \$602,910 over the five-year term.

POLICY ISSUE:

Approval of this recommendation supports the Board of Supervisors' priorities of a Healthy Community and Effective Partnerships by relocating services to meet the needs of the clients and also continue co-location of services.

STAFFING IMPACT:

There are no staffing impacts related to this recommendation. The WIC Program is supported by existing HSA staff.

CONTACT PERSON:

Colleen Woolsey, Associate Director. Telephone – 209-558-6833

LEASE AGREEMENT

LEASE SUMMARY:

Lease date: September 18, 2012

Landlord:
Mastagni Aderholt Joint Venture

Tenant:
Stanislaus County

Address of Landlord:
PO Box 4710
Modesto, CA 95352

Address of Tenant:
Attn: Purchasing Agent
1010 Tenth Street, Suite 5400
Modesto, CA 95354

Premises Address: 1620 Cummins Drive, Modesto, CA (APN: 081-026-044) which includes use of 45 parking spaces on Landlord's property across from Premises

Premises Square Footage: 9,900 square feet

Term: Approximately five (5) years

Monthly Basic Rent: In accordance with table below:

Month	Total Payment	Price per Sq Ft
1-30	\$9,900	\$1.00
31-60	\$10,197	\$1.03

Termination date: December 17, 2017

Permitted Use: Office space for County's Women, Infant and Children Service Program

AGREEMENT:

This Lease Agreement (the "Lease Agreement") is entered into in the City of Modesto, State of California, on September 18, 2012 between the **COUNTY OF STANISLAUS**, a political subdivision of the State of California, ("Tenant"), and Mastagni Aderhold Joint Venture ("Landlord"), in consideration of the premises, and the agreements, terms and conditions set forth, below.

1. **Premises:** Landlord leases to Tenant, and Tenant hires from Landlord, those certain premises in the County of Stanislaus, more particularly described as 1620 Cummins Drive, Modesto, California which includes Tenant's use of 45 parking spaces on Landlord's property located across from the Premises as shown on Exhibit A attached.
2. **Payment:** Tenant agrees to pay to Landlord for the premises above-described, during the term designated below as set forth in the following table. Payment is due and payable on the first day of the month following the month for which the obligation accrues.

Month	Total Payment	Price per Sq Ft
1-30	\$9,900	\$1.00
31-60	\$10,197	\$1.03

3. Term: The term of this Lease Agreement shall be for a period of five (5) years commencing on at 12:01 A.M. on December 18, 2012 and terminating at 11:59 P.M. on December 17, 2017.
4. Option to Renew: Tenant has the option to renew this Lease Agreement for a period of five (5) years from the expiration of the original term at a rate agreed upon by the parties. Tenant shall exercise these options in writing at least sixty (60) days prior to the termination of the existing lease period.
5. Utilities:
 - 5.1 Landlord shall pay for the furnishing of landscape maintenance, exterior water and exterior lighting which may be used in or upon the premises during the term of this Lease Agreement or any extension or holdover period.
 - 5.2 Tenant shall pay for the furnishing of sewer, interior water, gas, garbage, and interior electric which may be used in or upon the premises during the term of this Lease Agreement, or any extension or holdover period, provided that Tenant has contracted directly with the utility companies.
6. Use of the Premises: Tenant may use the premises for the purpose of health services, WIC program administration and general office use. Tenant shall not use or permit the premises to be used for any other purpose or purposes without first obtaining the written consent of Landlord, which consent shall not be withheld unreasonably.
7. Maintenance:
 - 7.1. Landlord Representations: Landlord represents to Tenant 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) Landlord has not received any notice from any governmental agency that the Building or the Premises are in violation of any law or regulation. Landlord 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). Landlord shall, prior to Tenant's occupancy, abate, at Landlord's sole cost and expense, all asbestos containing materials to the extent required by law and provide Tenant with an updated report from a licensed California Asbestos contractor to that effect.
 - 7.2. Landlord Obligations: Landlord shall, at Landlord'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 (excluding routine HVAC maintenance which shall be provided by County as set forth in paragraph 7.2.2 below), 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. Landlord, 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. Landlord's 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.

7.2.1 Landlord to provide HVAC: Landlord shall supply cooling, ventilating and heating with capacity to produce the following results effective during Normal Working Hours established by the Lease Agreement 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 Landlord from complying with these requirements, Tenant shall not unreasonably withhold its consent to temporary waivers or modifications.

7.2.2. Excluding normal wear and tear, and, excluding heating and cooling equipment, Tenant shall, at Tenant's sole expense, be responsible for the cost of repairing any area damaged by Tenant or Tenant'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 Tenant. All repairs and replacements shall: (a) be made and performed by contractors or mechanics approved by Tenant, 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. In addition, Tenant shall be responsible for providing routine maintenance of the HVAC system on at least a semi-annual basis.

7.3. Entry: Tenant shall permit Landlord, or an authorized agent of landlord, free access to the premises at all reasonable times for the purpose of inspection or for making necessary improvements or repairs.

7.4. Tenant's Right to Repair: If Tenant 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 Tenant's business) to Landlord of an event or circumstance which requires the action of Landlord with respect to repair and/or maintenance, and Landlord 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 Tenant, 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 Tenant's normal and customary business activities) or may surrender the premises and shall not be liable for any further lease payments under this Lease Agreement. Tenant 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 Lease Agreement to have been taken by Landlord and was not taken by Landlord within such period (unless such notice was not required as provided above), and Tenant took such required action, then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in having taken such action. If not reimbursed by Landlord within ten (10) days, Tenant shall be entitled to deduct from Basic Rent payable by Tenant under this Lease Agreement the amount set forth in its invoice for such work.

8. 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 Landlord know of any asbestos-containing material, Landlord will notify Tenant within ten (10) days.

If Tenant suspects or has reason to believe that the premises, as described in Section 1, contains asbestos-containing material, Landlord shall within ten (10) days of Tenant's request supply Tenant with an Asbestos Survey Report done by a qualified hazardous material specialist. If Landlord fails to have requested testing done, Tenant 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, Landlord shall provide the Tenant an Asbestos Abatement Plan within thirty (30) days.

9. 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 Landlord may terminate this Lease Agreement should it decide that repair expenses, do not merit the continuance of this Lease Agreement. Tenant shall be given notice by Landlord of said decision and notice shall provide Tenant adequate time to make other arrangements.
10. 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 may terminate this Lease Agreement should it decide that abatement cost, do not merit the continuance of this Lease Agreement. Tenant shall be given notice by Landlord of said decision and notice shall provide Tenant adequate time to make other arrangements.

11. Holding Over: In case Tenant holds over beyond the end of the term of this Lease Agreement, with the consent expressed or implied of Landlord, such tenancy shall be from month to month only, subject to the terms and conditions of this Lease Agreement, but shall not be deemed to be a renewal. The rent to be paid in a hold over situation shall be at the rate provided in the terms of this Lease Agreement.
12. Janitorial Services: Tenant shall furnish janitorial service as is necessary on the premises.
13. Alterations: The parties agree not to make any alterations in or on the premises without first securing the written consent of the other party, and further agree to make such alterations only at such time that is agreeable to the other party.
14. Notices: Notices desired or required to be given by this Lease Agreement or by any law now in effect, or later enacted, may be given by enclosing the Notice in a sealed envelope addressed to the party for whom intended and by depositing such envelope, with postage prepaid, in United State mail. The envelope containing the Notice shall be addressed to Landlord as follows:

Phil Mastagni
Herb Aderholt
Mastagni Aderholt Joint Venture
PO Box 4710
Modesto, CA 95352


or other place as may be designated in writing by Landlord and the envelopes containing the Notices to the Tenant shall be addressed as follows:

**Stanislaus County Purchasing Agent
1010 10th Street Place Suite #5400
Modesto, CA 95354**

15. Loss: Landlord 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 Tenant's occupancy, then this Lease Agreement shall be terminated immediately upon the happening of any such event whereupon Tenant shall surrender the premises and shall not be liable for any further payments. In the event of any lesser damage by any such cause, 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 Tenant during the period of restoration. If Landlord should fail to pursue restoration work with reasonable diligence to completion, Tenant, at its sole option may surrender the premises and shall not be liable for any further lease payments under this Lease Agreement.
16. Successors: Each and all of the terms and agreements contained in this Lease Agreement shall be binding upon and shall inure to the benefit of the successors in interest of Landlord, and wherever the context permits or requires, the successors in interest to Tenant.

- 17. Trade Fixtures: Tenant shall install such fixtures, equipment, and personal property as may be necessary and convenient for its operation. Such furniture, equipment, and personal property may be removed at any time during Tenant's tenancy or within a reasonable time thereafter, and shall not be considered part of the premises. Removal of the same shall not damage or deface the premises, and if the premises shall be so damaged, Tenant shall repair such damage at its own expense.
- 18. Fire and Other Perils Insurance: The parties agree to be responsible for damage by the perils of fire, extended coverage, and vandalism to those items of real and personal property for which they hold title or for which they have assumed liability to others.
- 19. Waiver of Rights of Subrogation: Landlord and Tenant 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. Landlord and Tenant 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.
- 20. Liability Insurance: Tenant agrees to hold Landlord harmless from loss occurring on the premises and arising out of Tenant's occupancy of the premises. Tenant assumes no liability for any loss caused by the sole negligence of Landlord.
- 21. Lack of Funding: If, during the term of this Lease Agreement, Tenant, Stanislaus County, in its sole discretion, determines that sufficient funds are not available to allow for continuation of this Lease Agreement or current County owned space becomes available, Tenant may terminate this Lease Agreement upon one hundred twenty (120) days written notice to Landlord without further obligation to Landlord.

Landlord has read and understands specifically those terms contained in paragraph number 21 listed directly above.



Landlord's Initials



Landlord's Initials

- 22. Surrender: Tenant shall surrender the premises to Landlord at the expiration of this Lease Agreement in as good a condition as at the commencement of it, excepting reasonable wear and tear, damages and destruction by the elements, or other persons.
- 23. Subordination and Mortgages:
 - 23.1. Subordination and Non-Disturbance. Tenant agrees, at Landlord's option, to subordinate this Lease Agreement to the lien of any mortgages or deeds of trust now or hereafter in force against the building; provided, however, Tenant's obligation to subordinate this Lease Agreement is expressly conditioned upon Tenant receiving a written agreement in the form of Document I in the Supplemental Lease Documents delivered to Landlord concurrently with this Lease Agreement and provided further that no such subordination shall affect any option to extend the Term of this Lease Agreement, right of first offer to lease additional premises, option to purchase or right of first offer to purchase the property which may be included in this Lease Agreement.

- 23.2 Existing Deeds of Trust. The beneficiary under any existing deed of trust affecting the building shall provide a written agreement to tenant in the form of Document I in the Supplemental Lease Documents delivered to Landlord concurrently with this Lease Agreement within thirty (30) days after the execution of this Lease Agreement.
- 23.3 Request for Notice. Landlord acknowledges that Tenant intends to record a Request for Notice with respect to any mortgages or deeds of trust affecting the property in the form of Document II in the Supplemental Lease Documents delivered to Landlord concurrently with this Lease Agreement.
- 23.4 Notice of Default. If any mortgagee or beneficiary under a deed of trust affecting the property gives written notice of its name and address to Tenant by registered mail requesting any such notice with reference to this Section, Tenant agrees to use its best efforts (but without liability for failure to do so) to give such mortgagee a copy of any notice of default served upon Landlord which could permit Tenant to terminate this Lease Agreement and an additional ten (10) days within which to cure such default.
24. Estoppel Certificate: Tenant shall, within thirty (30) days after written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement in the form of Document III in the Supplemental Lease Documents delivered to Landlord concurrently with this Lease Agreement (properly completed) but shall have no other obligation to deliver any other form of estoppel certificate. It is intended that any such statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or holder of any mortgage upon Landlord's interest in the Premises.
25. Entire Agreement: This Lease 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 party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Lease Agreement shall be valid or binding.
26. Duplicate Counterparts: This Lease Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]


IN WITNESS WHEREOF Landlord has executed this Lease Agreement and Tenant, County of Stanislaus, by order of the Board of Supervisors, has caused this Lease Agreement to be executed on its behalf by the County Purchasing Agent on the day, month and year above written.

TENANT
COUNTY OF STANISLAUS
GSA Purchasing Division

LANDLORD
MASTAGNI ADERHOLT JOINT VENTURE

By: _____
Keith D. Boggs, Assistant Executive Officer,
GSA Director/Purchasing Agent


By:  _____
Phil Mastagni

By:  _____
Herb Aderholt

Approved: BOS Resolution: # _____

APPROVED AS TO CONTENT:
Stanislaus County
Health Services Agency

APPROVED AS TO FORM
John P. Doering, County Counsel

By:  _____
Mary Ann Lee, Managing Director

By:  _____
Dean Wright, Deputy County Counsel

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Exhibit A

OVERFLOW PARKING

