

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

DEPT: Library

BOARD AGENDA # \*B-8

Urgent  Routine

AGENDA DATE April 30, 2013

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of a New Five-Year Lease Agreement Between the County and the Denair Community Services District for the Denair Branch Library Located at 4801 Kersey Road in Denair, California

STAFF RECOMMENDATIONS:

Authorize the Purchasing Agent to enter into a five-year lease agreement on behalf of the Stanislaus County Library for the property located at 4801 Kersey Road in Denair, California with the Denair Community Services District for housing and operating the Denair Library.

FISCAL IMPACT:

The term of the lease is for a total of 60 months. The annual cost of the lease is \$7,200. The County will have the option to renew this lease for a five-year period.

With the Board of Supervisors approval of this lease, the Fiscal Year 2012-2013 Budget of the Library includes estimated revenues and appropriations to fund the lease for the remainder of the fiscal year estimated to be \$1,200. (Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2013-196

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien

and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. DCS-04-31

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**FISCAL IMPACT (Cont.):**

The Recommended Proposed Budget for Budget Year 2013-2014 will include estimated revenue and appropriations to fund lease costs, as well as, subsequent budget years through the term of the lease.

**DISCUSSION:**

**Background**

The Denair Library opened January 23, 1913 in the office of the Denair High School Principal L.C. Newby. He was the acting librarian for a few months. In October, 1960, the library moved to a 600 square foot building at 460 Main Street. On October 16, 1976, a rental agreement with Denair Community Services District was signed for a new library space at 4801 Kersey Road. This is the current location of the Denair Library.

Originally, the County paid rent along with all charges for utilities and interior maintenance of the building. Denair Community Services District was required to repair and maintain at its expense the exterior of the building.

Effective October 1, 1986, Denair Community Services District agreed to no longer charge the County rent.

In addition, the Denair Community Services District agreed to pay all utility bills, provide janitorial service and supplies, maintain the grounds surrounding the library, and continue to provide ongoing and preventative maintenance of the Denair Library building. In exchange, the Library agreed to keep the Denair Library open for at least 18 hours per week subject to the availability of funds and resources.

In March of 2011, County Counsel received a letter from Costanzo & Associates who represent Denair Community Services District requesting that the library begin paying rent again for use of the building. On March 15, 2011, the Board of Supervisors authorized the County to explore options for housing of the Denair Library. As this exploration yielded no alternatives, the County re-entered into negotiations with the Denair Community Services District in June, 2012.

**POLICY ISSUES:**

The Board of Supervisors should determine if approval of this lease agreement with the Denair Community Services District for housing and operating the Denair Library is

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consistent with the Board's priority of A Strong Economy and Efficient Delivery of Public Services.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**CONTACT PERSON:**

Vanessa Czopek, County Librarian      Phone: 209-558-7801

## LEASE AGREEMENT

### LEASE SUMMARY:

**Lease date:** May 1, 2013

**Landlord:**  
Denair Community Services District

**Tenant:**  
Stanislaus County

**Address of Landlord:**  
3850 N. Gratton Road  
PO Box 217  
Denair, CA 95316

**Address of Tenant:**  
1010 10<sup>th</sup> Street, Suite 5400  
Modesto, CA 95354

**Premises Address:** 4801 Kersey Road, Denair, CA 95316

**Premises Square Footage:** 2,400

**Term:** Sixty (60) months

**Monthly Basic Rent:** Six hundred dollars (\$600.00) or \$0.25/square foot (approx.)

**Termination date:** April 30, 2018

**Permitted Use:** Public library

### AGREEMENT:

This Lease Agreement (the "Lease Agreement") is entered into in the City of Modesto, State of California, on May 1, 2013 between the **COUNTY OF STANISLAUS**, a political subdivision of the State of California, ("Tenant"), and Denair Community Services District ("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 4801 Kersey Road, Denair, California (the "Premises").
2. **Payment:** Tenant agrees to pay to Landlord for the Premises during the term designated below, \$600.00 month for rent payable on the first day of the month following the month for which the obligation accrues.
3. **Term:** The term of this Lease Agreement shall be for a period of sixty (60) months commencing at 12:01 A.M. on May 1, 2013 and terminating at 11:59 P.M. on April 30, 2018.
4. **Option to Renew:** Tenant has the option to renew this Lease Agreement for two succeeding one-year periods on the same terms. Tenant shall exercise these options in writing at least one (1) month prior to the termination of the existing lease period. Renewal rental rates will be at the monthly basic rate.
5. **Utilities:**
  - 5.1 Landlord shall pay for the furnishing of water, sewer, and garbage 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 electrical, gas, telephone, and alarm monitoring service 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. Tenant shall also be responsible for landscape maintenance.
6. Use of the Premises: Tenant may use the Premises for the purpose of operating a public library. 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 Building, including electrical, heating, ventilating and air conditioning ("HVAC"), mechanical, plumbing, and similar building services are in reasonable good working order and condition and that Landlord has not received any notice from any governmental agency that the Building or the Premises are in violation of any law or regulation.
- 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 as needed: (1) the structural elements of the Building, including without limitation, all permanent exterior walls, ceiling, the roof, plumbing, and electrical systems; (2) mechanical (including HVAC), and other utility service systems serving the Building. Landlord shall, at its sole cost and expense, perform all maintenance and repair to the above specified elements of the building and/or systems. All repairs and maintenance shall be made and performed by licensed contractors or licensed mechanics and be at least of equal equality, value, and utility as the original work or installation and shall be in accordance with all applicable law.
- Landlord's obligations under this paragraph 7.2 shall exclude repairs to (the interior of the building, including floor coverings, interior partitions, doors, painting and signage for the building. Excluding repair and replacement of HVAC and the elements of the exterior of the Building referred to above, Tenant shall, at Tenant's sole expense be responsible for the cost of repairing any area damaged by Tenant or by Tenant's agents, employees and invitees and visitors and shall repair all electronic, telephone, data cabling and other related equipment that is installed by or used for the exclusive benefit of the Tenant and all repairs shall be made and performed by licensed contractors or licensed mechanics approved by Tenant and be at least of equal quality, value and utility as the original work or installation and shall be in accordance with all applicable law.
- 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.

Neither Landlord or Tenant are aware of or know of any asbestos containing material in the Building.

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. Mold: Landlord represents and warrants that, to the best of Landlord's knowledge, Landlord has assessed the presence of mold or conditions likely to result in the presence of mold, and is delivering the Premises free of mold, whether visible, invisible, or hidden. Landlord further represents and warrants that to the best of Landlord's knowledge, Landlord has assessed the premises for the presence of termites and is delivering the premises free of termites.

Landlord shall indemnify, defend, and hold harmless Tenant from and against any and all claims, demands, liabilities, causes of action, judgments, assessments, fines, and penalties, including reasonable attorneys fees and cleanup and remediation costs relating in any manner whatsoever to the presence of mold, mildew, microbial growths, and any associated mycotoxin (mold) in the Building or Premises.

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:

**Denair Community Services District  
3850 N. Gratton Road, PO Box 217  
Denair CA 95316**

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. 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.

Library  
Lease #29647

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.**

GW

**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:

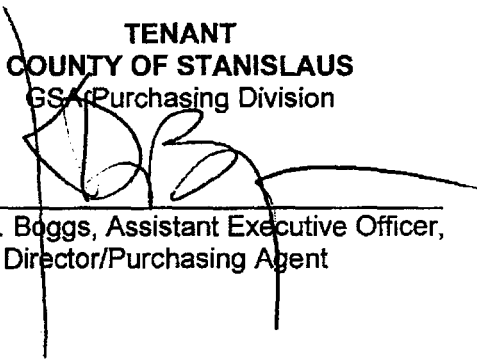
There is no mortgage, deed of trust or other lien against the premises and the Landlord, a public entity, cannot, and will not, allow the establishment of any mortgage or deed of trust or lien against the property during the term of this lease or any extension thereof.

24. 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.

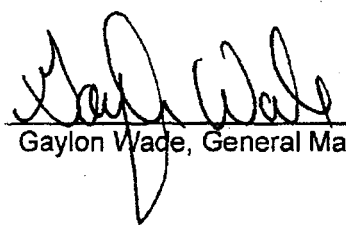
25. Duplicate Counterparts: This Lease Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.

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


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

**LANDLORD**  
**DENAIR COMMUNITY SERVICES DISTRICT**

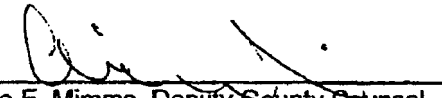
By:   
Gaylon Wade, General Manager



**APPROVED AS TO CONTENT:**  
**Stanislaus County Library**

By:   
Vanessa Czopek, County Librarian

**APPROVED AS TO FORM**  
**John P. Doering, County Counsel**

By:   
Alice E. Mimms, Deputy County Counsel