

# County of Santa Clara Facilities And Fleet Department



FAF02 102009

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Services

Reviewed by: Jeffrey D. Draper  
Director, Facilities & Fleet Department

DATE: October 20, 2009

TO: Board of Supervisors

FROM:

A handwritten signature in black ink, appearing to read "Jeffrey D. Draper".

Jeffrey D. Draper  
Director, Facilities & Fleet Department

SUBJECT: Transfer of Responsibilities for the Santa Clara County Trial Court Facilities.

## **RECOMMENDED ACTION**

Consider recommendations from the Office of the County Executive relating to the transfer of responsibilities for trial court facilities pursuant to the Trial Court Facilities Act of 2002, from the County of Santa Clara (County) to the Judicial Council of California, Administrative Office of the Courts (AOC).

Possible action:

- a. Approve First Amendment to Agreement with the Judicial Council of California, Administrative Office of the Courts to extend transfer agreement pursuant to the Trial Court Facilities Act of 2002 (SB 1732), relating to certain real properties used as Court Facilities for the following leased Court Facilities: 111 N. Market Street, Suites 950 & 960; 111 W. St. John St, Suite 100; 115 Terraine Street; 170 Park Center Plaza; 935 Ruff Drive; 85 and 99 Notre Dame Ave, all properties in San Jose.

- b. Approve delegation of authority to the County Executive, or designee, to grant consent or provide extensions of time periods in the Agreement, make any non-substantive changes and execute other documents determined to be necessary to implement the intent of the Agreement, following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on December 31, 2010.
- c. Approve delegation of authority to Director, Facilities and Fleet Department, or designee, to negotiate and execute amendments to existing lease agreements, if required, or if the transfers are necessary, to transfer or assign utility accounts relating to certain Court Facilities to the AOC following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on December 31, 2010.
- d. Approve delegation of authority to Director of Procurement, or designee, to amend service contracts with Applied Power, Pacific Coast Trane Service, Reliant Water Management, San Jose Boiler Works, Sonitrol and any other vendor, relating to providing building equipment operations and maintenance services for the Court facilities and deleting references to Court facilities, following approval by County Counsel as to form and legality, and approval by the Office of the County Executive. Delegation of authority shall expire on December 31, 2010.

**FISCAL IMPLICATIONS**

The recommended action described in item "a" continues existing County responsibilities for lease expenses at the seven court facilities. There is no impact to the General Fund as these expenses were anticipated in the FY 2010 budget.

The County is working to finalize an agreement with the Superior Court and the Administrative Office of the Courts to finance construction of a new family resource court. The leases described in this transmittal will continue to be a County responsibility until the new Court is constructed and ready for occupancy. The lease obligation is anticipated to continue through 2014 when the new courthouse may be complete. Existing lease obligations are budgeted at \$4,689,851 for the eight leased facilities. This number is slightly different than the CFP as an inflation factor is applied at the point of transfer of responsibility.

The Amendment provides that the AOC will bear any lease costs that exceed the CFP that the County would otherwise have to pay, and the County will have to pay the AOC any reduction in lease costs that bring the County's lease obligation below the CFP that the County would otherwise have to pay.

CFPs for the properties budgeted in FY 2010 are described below:

Property	Square Footage	CFP Amount	Transfer Type
111 N. Market, Suites 950 & 960	4,442	\$ 121,040	Transfer of Responsibility/ Alternative CFP
	10,577	\$ 384,984	

111 W. St. John, Suite 100			Transfer of Responsibility/Alternative CFP
170 Park Center Place	29,703	\$ 1,320,936	Transfer of Responsibility/Alternative CFP
85 Notre Dame	9,600	\$37,818	Transfer of Responsibility/Alternative CFP
99 Notre Dame	13,748	\$597,696	Transfer of Responsibility/Alternative CFP
935 Ruff Drive	17,600	\$688,716	Transfer of Responsibility/Alternative CFP
115 Terraine	43,131	\$2,042,846	Transfer of Responsibility/Alternative CFP
<b>Total</b>		<b>\$5,194,036</b>	

The property transfers after September 30, 2008, are subject to incremental costs estimated to be \$219,354 required for inflation of all of the CFPs beyond the July 1, 2008 date by which all properties were originally estimated to transfer. The CFPs are described in detail in the Background section of this transmittal. These expenditures were budgeted for FY 2010.

## **CONTRACT HISTORY**

Nine Court properties were transferred to the AOC between September and December 2008.

## **REASONS FOR RECOMMENDATION**

### Responsibilities of the County and the State

The legislation which governs the transfer of responsibilities for the Trial Court Facilities is delineated in SB 1732 (Escutia-Chapter 1082, Statutes of 2002), which was amended by SB 256 (Escutia-Chapter 592, Statutes of 2003), SB 749 (Escutia-Chapter 249, Statutes of 2004), AB 1435 (Evans-Chapter 410, Statutes of 2005), SB 10 (Dunn-Chapter 444, Statutes of 2006) and AB 1491 (Jones-Chapter 6, Statutes of 2008). This bill was intended to provide the conclusion to the historic trial court funding and operational reforms that were begun under the Trial Court Funding Act of 1997 (AB 233, Escutia and Pringle).

SB 1732 established a framework and procedures for transferring responsibilities from the County to the AOC through negotiated transfer agreements for the eighteen existing Santa Clara County Trial Court facilities, including parking, on a building-by-building basis. As amended, the ultimate deadline to transfer responsibilities for the trial court facilities was

December 31, 2008.

The County entered into an agreement to defer transfer of the leased properties pending the outcome of negotiations with the Court and AOC regarding a new Family Resources Court facility. The agreement specified that responsibility for leased facilities would transfer to the AOC by November 1st, 2009 if no agreement had been reached on the Family Resources Court. Although progress is being made on negotiations, a development agreement has not yet been reached therefore the existing transfer agreement needs to be extended.

#### Additional Recommendations Related to Transfer

Recommended actions b through d are required to perform various tasks associated with transferring responsibility for real property. The County has master contracts that must be amended to remove references to Court facilities. In addition, the County must transfer numerous utilities accounts to the AOC involving electricity, gas, water, sewer, sanitation, and storm water service providers.

The proposed actions relating to the transfers pursuant to this item are not “projects” for CEQA purposes, as defined by 14 California Code of Regulations 15378 (CEQA Guidelines). Even if these transfers could be construed as a project under CEQA, they would be exempt from CEQA review because the transfers are statutorily required and therefore a ministerial act. Pub. Res. Code Sec. 21080(b)(1). These transfers are being done for the purposes of redistributing the operational and fiscal responsibilities between the State and the County and do not involve any change in use; thus, the proposed action is also exempt pursuant to the Class 1 categorical exemption for existing facilities (CEQA Guidelines Sec. 15301) and there is no reasonable possibility that the transfers will have a significant effect on the environment due to unusual circumstances.

## **BACKGROUND**

This section contains additional information on the Trial Court Facilities Act, the County processes and negotiations regarding transfer, and Court Facilities Payments.

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#### Due Diligence and Negotiation Efforts for Transfer of the Court Facilities:

The County established a SB 1732 County Negotiation Team in late 2002. Team members included representatives from the County Executive, County Counsel, FAF, and Controller's Offices. On October 22, 2002, the Board of Supervisors directed the Administration to collaborate with the Santa Clara County Superior Courts relating to the implementation of SB 1732 for court facilities transfer, construction and financing. In the intervening years discussions have occurred between Superior Court staff and County staff regarding possible financing of a new Family Resources Court facility to replace leased properties. The Board of Supervisors has been apprised of the status of the new Family Resources Court on several occasions.

On November 19, 2002, the Board appropriated \$4.7 million toward seismic retrofit designs of County courthouses. The Board subsequently included \$18.9 million for the courthouse seismic retrofit on the list of projects for Certificate of Participation (COP) issuance. In addition to the appropriation from the Board, the Federal Emergency Management Agency (FEMA) awarded the County \$3.3 million in 2005 for the seismic retrofit of three out of four courthouse

projects. In November 2003, the AOC completed statewide seismic assessments, identifying six of the County's court buildings that would require seismic upgrades. FAF staff negotiated with the AOC and the number of courthouses requiring seismic upgrades were reduced to four facilities: Santa Clara (AOC # 43-G1), Los Gatos (AOC # 43-I1), Palo Alto (AOC #43 -D1), and Hall of Justice-West (AOC #43 -A2). The overall court seismic upgrades projects are complete. The Palo Alto courthouse seismic upgrade work was completed in June 2007; the Los Gatos courthouse seismic work was completed in March 2008; the Santa Clara courthouse seismic work is completed in May 2008; and the Hall of Justice-West seismic work was completed in June 2008.

The SB 1732 project represented the largest property transfer in the County's history, and the legal complexities of the property transfers are significant both in terms of statutory requirements and fiscal consequence to the County. The remaining assignment of leased properties was held pending discussions regarding the New Family Resources Court.

### County Facility Payments (CFP) Background

Under SB 1732 the County is required to make a fixed annual payment (Court Facilities Payment or CFP) to the AOC in perpetuity to assist the Court in maintaining the Court facilities. The county-provided funds would be augmented by surcharges on civil, family law and probate actions statewide, with these funds aggregated into the State Court Facilities Construction Fund. In aggregate these funds were intended for use to acquire, rehabilitate, construct, finance and maintain court facilities.

CFPs are a source of funding for the ongoing operations and maintenance of court facilities, and must be paid by each county to the state, equivalent to the amount that the county historically expended for operation and maintenance of court facilities. Payment amounts are specific to each court facility, and must be approved by the State Department of Finance (DOF). CFP payments from counties are deposited into the State Court Facilities Trust Fund.

Transfer of the remaining seven leased facilities will be included in a Master Lease Transfer Agreement tied to the proposed terms of the New Family Resources Courthouse.

### **CONSEQUENCES OF NEGATIVE ACTION**

If the amendment to the agreement with the Court is not approved, the leased court facilities would be transferred to the Court at the end of the year.

### **STEPS FOLLOWING APPROVAL**

1. Return two (2) fully executed originals of the Transfer Agreement and all other documents including one original of Memorandum of Agreement, as described above to County Counsel, Attn: Katherine Harasz.
2. Provide Keyboard notification to Bill Drake and Ellen De La Cruz, FAF ISS Property Management Division.

### **ATTACHMENTS**

- Copy of First Amendment to Master Transfer Agreement -- Signed by AOC