

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

DEPT: Public Works *mbm*

BOARD AGENDA # *C-1

Urgent Routine

AGENDA DATE September 22, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into a Lease Agreement with the City of Modesto for Use of the Modesto Transportation Center

STAFF RECOMMENDATIONS:

1. Approve entering into a Lease Agreement with the City of Modesto for the use of the Modesto Transportation Center for an initial five-year period with the option to extend for three additional five-year periods.
2. Authorize the Chief Executive Officer to sign the Lease Agreement on behalf of Stanislaus County.

FISCAL IMPACT:

The Fiscal Year 2009-2010 cost of the Lease Agreement is \$25,000. Funding is included in Public Works - Local Transit System's Budget and will be budgeted annually thereafter to meet the County's financial obligations. Funding for Public Works Transit is through local transportation funds derived from the ¼ cent of California's general sales tax. This Agreement will not have a fiscal impact on the County General Fund.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-644

On motion of Supervisor Chiesa, Seconded by Supervisor Grover

and approved by the following vote,

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

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:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Enter into a Lease Agreement with the City of Modesto for Use of the Modesto Transportation Center

The initial term of the agreement will be for five years with possible renewals of up to three additional five-year periods. First year costs will be \$25,000 with annual 3.0% adjustments made on August 30th thereafter for the first five-year term. For the first, second and third, five (5) year Agreement extensions the annual rent increases will be 3.0%, or the increase in the Consumer Price Index (CPI) United States City Average for each extension, whichever is less.

DISCUSSION:

Submitted for consideration is the Lease Agreement (Agreement) between Stanislaus County and the City of Modesto for the use of the Modesto Transportation Center located at 9th and J Streets in downtown Modesto. The Agreement will allow for the use of three bus bays at the Transportation Center by Stanislaus County's intercity bus service, Stanislaus Regional Transit (StaRT). The Transportation Center's lease costs are annually budgeted in Public Works Local Transit's budget using local transportation funds (LTF) received from the Stanislaus Council of Governments (StanCOG). The LTF is derived from a ¼ cent of California's general sales tax.

Stanislaus County has had a Lease Agreement with the City of Modesto for the use of its downtown Transportation Center for over fifteen years. The County has used the Transportation Center as a key hub for its intercity bus services for passengers to connect with the Modesto fixed route service, the Modesto Area Express (MAX), and Greyhound. The StaRT Medivan service also uses the Transportation Center as its base for Stanislaus County residents who use the Medivan to go to Bay Area medical facilities.

POLICY ISSUES:

The Board of Supervisors should determine if this item is consistent with its priority of striving for a well-planned infrastructure system, efficient delivery of public services, and effective partnerships.

STAFFING IMPACT:

There are no staffing impacts associated with this action.

MODESTO TRANSPORTATION CENTER



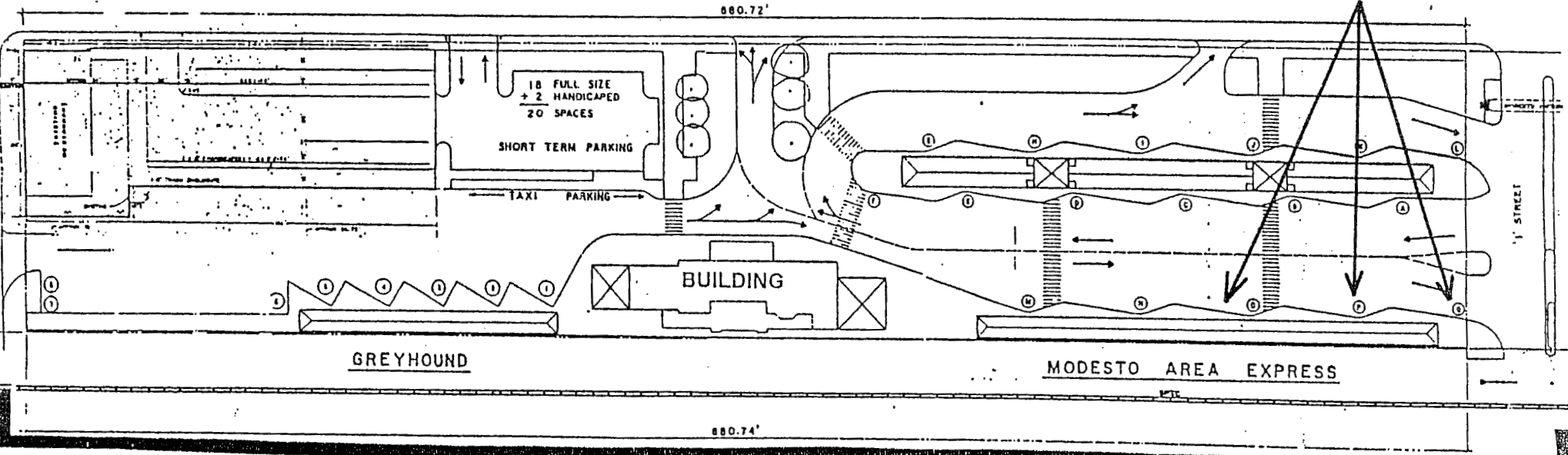
J STREET

J STREET

BUS PARKING AREA

9th STREET (SR 132)

880.72'



GREYHOUND

MODESTO AREA EXPRESS

880.74'

LEASE AGREEMENT

This Lease Agreement is made and entered into on this 4th day of November, 2009, by and between the CITY OF MODESTO, a municipal corporation, herein after referred to as LESSOR, and the COUNTY OF STANISLAUS, a political subdivision of the State of California, hereinafter referred to as LESSEE.

WHEREAS, LESSOR owns title to property known as a portion of block 143 of the City of Modesto, as per map filed December 21, 1942, in Volume 15 of Maps, Stanislaus County Records, lying easterly of the Union Pacific Railroad tracks which property shall be referred to as the Modesto Transportation C (the "Center"), being more particularly shown on Exhibit 1 attached hereto and made a part hereof; and,

WHEREAS, LESSEE desires to lease portions of the Center for the purpose of carrying on inter-City bus operations.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, LESSOR and LESSEE do hereby agree as follows:

1. DEFINITIONS

A. Building. "Building" is defined as the certain building known as the Modesto Transportation Center building consisting of one story and containing a total of approximately 4,055 square feet of floor space, located at 1001 9th Street, Modesto, California, and labeled "Building" on the attached Exhibit 1.

B. Common Area. "Common Area" shall be defined as the waiting area, restroom facilities and entryways of the Building located inside the Building, the sidewalks and public parking area located on the outside of the Building labeled "Common Area" on the attached Exhibit 1.

C. Bus Parking Area. "Bus Parking Area" shall be defined as the bus parking bays as outlined and labeled "Bus Parking Area" on the attached Exhibit 1.

D. Leased Premises. All of the areas used by LESSEE and its patrons within the Center.

2. LEASED PREMISES

A. Bus Parking Area. LESSOR hereby leases to LESSEE and LESSEE leases from LESSOR for the term, at the rental, and upon all the conditions set forth herein three (3) bus parking bays as delineated on Exhibit 1.

B. The leased premises are subject to the conditions set forth herein and the continuous and uninterrupted right of LESSEE and its officers, employees, business invitees, customers and patrons, of access to, from, over and across any part of LESSOR'S adjacent property which is not part of the Bus Parking Area for the purpose contemplated herein, including the Common Area.

3. TERM

The initial term of this lease shall be five (5) years commencing upon the date of approval of this lease by the Modesto City Council.

The term of this lease will automatically be extended for up to three (3) additional five-year periods, if neither the LESSOR, or LEESSE, object to the extension. The objection to the lease term extension must be submitted in writing by either party not later than ninety (90) days before the expiration date of the current term.

4. WARRANTY OF TITLE

LESSOR represents and warrants that:

A. LESSOR has title to the premises and has full right and power to grant the estate demised and to execute and perform this Lease Agreement:

B. The premises is now free and will remain free and clear of all encumbrances which could adversely affect LESSEE'S leasehold estate:

C. The intended use of the premises for a bus terminal is permitted by all applicable zoning laws and regulations: and

D. The premises comply with all applicable ordinances, regulations, zoning and other laws.

5. RELOCATION OF BUS PARKING WITHIN THE CENTER

LESSOR shall have the right to relocate the Bus Parking Area to another part of the Center in accordance with the following:

A. The new bus bay spaces shall be the same in number and dimensions as described in subparagraph 2A, and shall be placed in the same condition by LESSOR at its cost.

B. All costs incurred by the LESSEE as a result of the relocation (including but not limited to the cost of new signing to the new location) shall be at the LESSOR's cost.

C. LESSOR shall give LESSEE a least thirty days (30) days' notice of LESSOR's intention to relocate the bus bays.

D. The parties shall immediately execute an amendment to this Lease Agreement stating the new location of the bus bays.

6. PAYMENT OF RENT

A. For the rights and privileges granted by LESSOR to LESSEE under this lease, LESSEE agrees to pay Twenty-Five Thousand and no/100s dollars (\$25,000) each year to LESSOR's Finance Director, P.O. Box 642, Modesto, California 95353.

B. The first payment shall be prorated for the remainder of the fiscal year in which the parties formally approve the lease (July 1, 2009 – June 30, 2010). For the period beginning July 1, 2009 through the date that the Modesto City Council approves this agreement, the LESSEE shall pay LESSOR \$68.50 per day for the privilege of using the Transportation Center during the period of time when a formal agreement was not in place. This is a one-time payment and shall be made within thirty (30) days of the date of the City Council action.

C. The next annual payment shall be made no later than August 30, 2010. Each annual payment thereafter shall be made no later than August 30 of each year and be applicable to that fiscal year. The LESSEE shall send payment to LESSOR regardless of whether or not it receives an invoice from the LESSOR. The amounts to be paid by the LESSEE are shown below for each of the last four years of the first term of this lease agreement:

<u>Due Date for Payment</u>	<u>Amount</u>
August 30, 2010	\$25,750.00
August 30, 2011	\$26,523.00
August 30, 2012	\$27,318.00
August 30, 2013	\$28,138.00

D. For the first, second, and third, five (5) year Agreement extensions the annual rent increase will be 3% (three percent), or the increase in the Consumer Price Index (CPI) United States City Average for each year of the extension, whichever is less.

E. Based on changes in financial condition, service costs, or any other unanticipated change in circumstances, either party to this Agreement, providing at a minimum a 60 (sixty) day notice prior to the end of the current Agreement, or Agreement extension, can unilaterally request the other party to renegotiate the basis on which the annual rental rate is determined. If an agreement can not be reached by the end of the term for the current Agreement, or extension, this Agreement can be considered terminated.

F. Annual rent shall afford the LESSEE unrestricted use of the three (3) bus bays at the Center and fulfills the LESSEE's share of the costs to operate and maintain the Center's common areas.

7. PERMITS

LESSOR represents and warrants that it shall:

A. Ascertain or otherwise assure itself that LESSEE shall be permitted to operate at and from the Leased Premises.

B. Acquire any and all required use permits and zoning approvals or variances and maintain same during the term of this Lease Agreement, and

C. Secure any and all required building and associated permits.

8. USE

LESSEE agrees that the Leased Premises shall be used only for its inter-City bus service purposes, including but not limited to loading and discharge of passengers and to provide for the safety, comfort, and convenience of its passengers.

9. NO WASTE, NUISANCE, OR UNLAWFUL USE

LESSEE shall not commit any waste on the Leased Premises, create or allow any nuisance to exist on the Leased Premises, or use or allow the Leased Premises to be used for any unlawful purpose.

10. LESSEE'S RIGHT TO TERMINATE

LESSEE shall have the right to terminate this Lease Agreement for convenience and without cause by providing thirty (30) days prior written notice to LESSOR.

11. LESSEE'S RIGHT TO USE COMMON AREAS

A. LESSOR gives to LESSEE and its authorized representatives and invitees the nonexclusive right to use the Common Areas, with others who are entitled to use the Common Areas, subject to LESSOR'S right set forth below.

B. LESSOR shall maintain the Common Areas in good condition. A proportionate share of the cost of general maintenance of the Common Areas shall be incorporated in the rent paid by the LESSEE. However, LEASEE shall reimburse LESSOR for any damage caused to any part of the Common Areas which is caused in whole or part by the acts or omissions of any of LESSEE'S authorized representatives.

C. LESSOR shall have the right to:

1) Establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use, and operation of the Common Areas.

2) Close temporarily any of the Common Areas for maintenance purposes.

3) Charge for parking in the parking areas of the Center

4) Select a person or person to maintain and operate any of the Common Areas at any time LESSOR determines that the best interest of the Center will be served by having any of the Common Areas maintained and operated by that person or persons. LESSOR shall have the right to negotiate and enter into a contract or contracts on such terms and conditions and for such periods of time as LESSOR deems reasonable and proper both as to service and as to cost.

5) Make changes to the Common Areas including, without limitation, changes in the location of driveways, entrances, exits, vehicular parking spaces, parking area, or the direction of the flow of traffic.

12. TRASH, UTILITIES

LESSOR shall provide a dumpster on the Center premises to dispose of trash. It shall remain the responsibility of LESSEE to deliver its trash to the dumpster.

13. MAINTENANCE AND REPAIR

LESSOR, at its sole cost and expense, shall perform all other service and maintenance, including but not limited to, the structural foundation of the building, roof, walls, roof flashing, and the water tight condition of the roof, underground and otherwise

concealed plumbing and sewage lines, septic and other holding tanks, sidewalks, paving, and landscaping, and any heating, air conditioning, gas or electrical systems.

14. SIGNS

LESSEE shall have the right at its own expense to erect in, on, or about the Facility signs as LESSEE may deem necessary and proper in the conduct of its business and that meet applicable codes and ordinances, and subject to the written approval of LESSOR'S Transit Manager, or designee, as to their number, size, construction, location, and general appearance prior to installation. LESSEE agrees to remove any signs or advertising erected on the Facility at LESSEE'S expense at the termination of this Lease Agreement. LESSOR shall provide the signs which it deems necessary for Common Areas.

15. LESSEE INDEMINIFICATION

LESSEE shall hold LESSOR, its agents, officers, employees, and volunteers harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of LESSEE.

16. LESSOR INDEMINIFICATION

LESSOR shall hold LESSEE, its agents, officers, employees, and volunteers harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of LESSOR.

17. DAMAGE OR DESTRUCTION

In the event of destruction of, or substantial damage to, the building located upon the Center during the term of this Lease Agreement which renders the Facility unusable to LESSEE, LESSOR shall have the option of:

A. Within a reasonable time after such damage or destruction, of either replacing or rebuilding the Building, and in such manner and according to such

plans and specifications which would restore the building to substantially the same condition as it was in immediately before its destruction or substantial damage.

B. Declining to replace or rebuild, in which event LESSEE shall have the option of terminating this Lease Agreement by written notice. If this Lease Agreement is not terminated by LESSEE or if LESSOR shall elect to rebuild or replace the damaged or destroyed building then and in such event the rental hereinabove provided for or a just and proportional part thereof according to the nature and extent of the damage sustained shall be abated until said Building has been repaired or replaced as aforesaid.

18. INSURANCE REQUIREMENTS

The LESSEE, and/or assigned bus operator, shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the LESSOR as may be required by the LESSOR'S Risk Manager. The policies or certificates thereof shall provide that thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the LESSOR'S Risk Manager by certified mail, return receipt requested, for all of the following stated insurance policies:

A. Worker's Compensation – in compliance with the statues of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

B. General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the use of the Transportation Center or the general aggregate limit shall be twice the required occurrence limit. This insurance shall indicate on the certificate of insurance the following coverage's, and indicate the policy aggregate limit applying to: premises and operations; board form contractual; subcontractors; products and completed operations as applicable.

C. Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

If at any time of said policies shall be unsatisfactory to the LESSOR, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the LESSOR, the LESSEE, and/or designated bus operator, shall promptly obtain a new policy, submit the same to the LESSOR'S Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the LESSEE, and/or designated bus operator, to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the LESSOR, may be forthwith declare suspended, or terminated. Failure of the LESSEE, and/or designated bus operator, to obtain and/or maintain any required insurance shall not relieve the LESSEE from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the LESSEE, and/or designated bus operator, concerning indemnification. The LESSOR its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the LESSOR, its agents, officers, employees, and volunteers for losses arising from work performed by the LESSEE and/or its designated bus operator. The LESSEE'S, and/or designated bus operator's, insurance policy(ies) shall include a provision that the coverage is primary as respects the LESSOR; shall include with insurer(s) with acceptable Best's rating of A:VII or with approval of the LESSOR'S Risk Manager. The County, and/or its designated bus operator, must deliver the certificates evidencing existence of the insurance listed above to the LESSOR'S City Clerk at the time this agreement is approved.

The LESSEE, and/or its designated bus operator, shall provide the LESSOR with separate endorsements evidencing proof of the LESSOR'S additional insured status to both the general and liability and automobile liability insurance policies. In addition, LESSEE shall provide the LESSOR with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to the Transportation Center, the LESSEE'S, and/or designated bus operator, insurance coverage shall be primary insurance as respects the LESSOR, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the LESSOR, its officers, officials, employees, or volunteers shall be excess to the LESSEE'S, and designated bus operator's, insurance and shall not contribute with it.

19. EMINENT DOMAIN

Eminent domain proceedings resulting in the condemnation of part of the Leased Premises herein that leave the rest unusable by LESSEE for purposes of the business for which the premises are leased will not terminate this Lease Agreement, unless LESSEE at its option terminates it by giving written notice of termination to LESSOR. The effect of such condemnation, should such option not be exercised, will be to terminate this Lease Agreement as to the portion of the premises condemned and leave it in effect as to the remainder of the premises, and the rental provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of LESSOR, except to the extent that part of the award is allocated as damages to fixtures on the premises which were furnished by LESSEE or damages for the value of LESSEE'S leasehold estate.

20. ACCEPTANCE

LESSEE hereby acknowledges that when it occupies the Leased Premises it shall be deemed to have received the Leased Premises in good order and condition and covenants that on the termination of this Lease Agreement by lapse of time or otherwise, it will yield up the Leased Premises to LESSOR in as good condition as when the LESSEE entered upon the Leased Premises, ordinary wear and tear excepted.

21. SUBLEASE AND ASSIGNMENT

LESSEE shall not assign or transfer this Lease Agreement in whole or part, sublet or license the Leased Premises or any part thereof without the prior written consent of LESSOR'S City Manager which consent shall not be unreasonably withheld, conditioned, or delayed. All such assignees and subtenants shall comply with all the terms and conditions of this Lease Agreement. LESSEE agrees that it will notify

LESSOR in writing of the name(s) of LESSEE'S subtenants and their relationship to LESSEE.

22. TERMINATION BY LESSOR PRIOR TO EXPIRATION

LESSOR'S City Manager shall have the right to immediately terminate this Lease Agreement, in whole or 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 thirty (30) 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 it is obligated to perform, keep or observe under this Lease Agreement after the expiration of a thirty (30) day period of warning or ultimatum given by LESSOR'S City Manager to LESSEE to correct any such deficiency or default.

D. The abandonment of the Leased Premises or any portion thereof, or discontinuance of LESSEE'S business operations, or portion thereof. Should this occur, LESSOR shall not be responsible for the custodial protection of merchandise, fixtures or equipment abandoned, even though it is necessary for the LESSOR to remove same from the Leased Premises for storage or disposal.

23. RIGHTS AFTER TERMINATION

A. In the event of termination for default or unsatisfactory performance by LESSEE, LESSOR shall have the right (unless otherwise specified in the termination notice), at once and without further notice to LESSEE to enter and take possession of the premises occupied by LESSEE, by force or otherwise, and expel, oust and remove any and all parties who may occupy any portion of the premises or Transportation Center covered by this Lease Agreement, and any and all goods and chattels belonging to LESSEE or its associates which maybe found in or upon same, without being liable for prosecution or to claim for damages therefor. Upon such termination by LESSOR, all parties, powers and privileges of LESSEE shall cease and LESSEE shall immediately vacate any and all space occupied by it under this Lease Agreement, and

shall make no claim of any kind whatsoever against LESSOR, its agents or representatives, by reason of such termination, or any act incident thereto.

B. In case of any default, re-entry, expiration and/or dispossession by summary proceedings or otherwise.

(1) The rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration, together with such expenses as LESSOR may incur for legal expenses, attorneys' fees, brokerage, and/or restoring the Leased Premises in good order, or for preparing the same for re-rental;

(2) LESSOR may relet the Leased Premises or any part or parts thereof, either in the name of LESSOR or otherwise, for a term or terms which may at LESSOR'S option be less than or exceed the period which may otherwise have constituted the balance of the term of the Agreement and may grant concessions or free rent; and/or;

C. LESSEE hereby expressly waives any and all rights of redemption granted by or under any present or future laws in event of LESSEE being evicted or dispossessed for any cause, or in the event of LESSOR obtaining possession of Leased Premises, by reason of the violation by LESSEE of the covenants and conditions of this Lease Agreement or otherwise.

D. Fees and Expenses. If LESSEE shall default in the observance or performance of any term or covenant on LESSEE'S part to be observed or performed under or by virtue of any of the terms or provisions in any Article of this Lease Agreement, LESSOR may immediately or at any time thereafter, and without notice, perform the same for the account of LESSEE, and if LESSOR makes expenditures or incurs any obligations for the payment of money in connection therewith including, but not limited to, attorney's fees in instituting, prosecuting or defending any action or proceedings, such sums paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by LESSEE to LESSOR within thirty (30) days of rendition of any bill or statement to LESSEE therefor.

24. QUIET ENJOYMENT

If and so long as LESSEE shall keep all the covenants and agreements required by it to be kept during this Lease Agreement and shall perform all its other

obligations hereunder, LESSOR covenants and agrees that it shall not interfere with the peaceful and quiet occupation and enjoyment of the Leased Premises by LESSEE.

25. RIGHT OF ENTRY PREMISES

LESSOR and its agents and employees shall have the right to enter upon the Leased 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.

26. COMPLIANCE WITH LAWS, ORDANCES, AND RULES

LESSEE agrees to conform to and not violate laws, ordinances, rules, regulations, and requirements of federal, state, county, municipal, or other governmental authorities and the various departments thereof now existing or hereinafter created affecting LESSEE'S use and occupancy of the Leased Premises. In no event shall LESSEE be required to make physical changes in the Leased Premises unless the physical changes are necessitated by LESSEE'S acts or omissions.

27. FAILURE TO VACATE

LESSEE agrees to vacate the Leased Premises at the expiration of the Lease Agreement term or upon the termination of the Lease Agreement, whichever occurs first. Failing to vacate as herein provided, agrees that LESSOR, or its authorized agents, may enter upon the Leased Premises and remove all personal property therefrom and in the event, LESSEE waives any and all claims for damage against LESSOR, its agents or employees. Nothing herein shall be deemed a waiver of any rights of LESSOR to demand and obtain possession of the Leased Premises in accordance with law in the event of a violation on LESSEE'S part of any terms or conditions hereof.

28. 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.

29. COPARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Lease Agreement is intended or shall be construed as in any way creating or establishing the relationship of copartners or coventurers between the parties hereto, or as constituting LESSEE as an agent or representative of LESSOR for any purpose or in any manner whatsoever.

30. 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 it to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover reasonable attorney's fees to be fixed by the court, and such recovery shall include court costs and attorney's fee on appeal if any. As such herein, "the party prevailing" means the party in whose favor final judgment is rendered and "legal action or proceeding" includes arbitration.

31. PARTIES BOUND

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

32. NOTICES

Notices given under the terms of this Lease Agreement shall be deemed properly served if such notice is mailed by certified mail, return receipt requested, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

LESSOR	LESSEE
City Manager	Director of Public Works
City of Modesto	County of Stanislaus
P.O. Box 642	1010 10 th Street
Modesto, CA 95353	Modesto, CA 95353

Notices mailed in accordance with the provisions hereof shall be deemed to have been given as of the date of receipt or the third business day following the date of such mailing, whatever is earlier.

33. LEGAL CONSTRUCTION

In the event any one or more of the provisions contained in this Lease Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

34. ADMINISTRATION OF AGREEMENT

A. This Lease Agreement shall be administered on behalf of LESSOR by LESSOR'S Transit Manager or such other person as shall be designated in writing from time to time by LESSOR'S City Manager.

B. This Lease Agreement shall be administered on behalf of LESSEE by LESSEE'S Transit Manager or such other person as shall be designated in writing from time to time by LESSEE.

34. NONDISCRIMINATION OF PERSONS WITH DISABILITIES

In connection with the performance of this Lease Agreement, LESSEE shall be in compliance with Section 504 of the Rehabilitation Act of 1973 as incorporated in the Revenue Sharing Act, the applicable administrative requirements promulgated in response thereto, and any other applicable Federal laws and regulations relating to discrimination of persons with disabilities and participation.

35. NONDISCRIMINATION

A. The LESSEE, for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination of Federally assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

In the event of breach of any of the above nondiscrimination covenants, LESSOR shall have the right to terminate the Lease and to re-enter and repossess said land and facilities thereon, and hold the same as if said Lease had never been made or issued.

(B) The LESSEE for itself, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination; and (3) that the LESSEE shall use the premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations maybe amended.


That in the event of breach of any of the above nondiscrimination covenants, LESSOR shall have the right to terminate the Lease to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Lease Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2009-530, adopted by the Council of the City of Modesto on the 4th day of November, 2009.

CITY OF MODESTO, a municipal Corporation

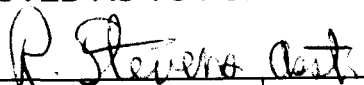
BY 
Greg Myhoff
City Manager

ATTEST:

By 
Stephanie Lopez
City Clerk

(SEAL)

APPROVED AS TO FORM:

By 
Susanna Alcala Wood
City Attorney

APPROVED AS TO RISK MGNT. FORM:

By 
Mary Akin
Risk Manager

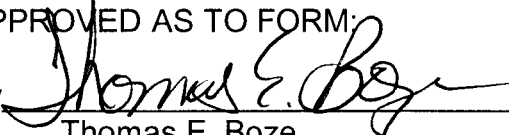
IN WITNESS WHEREOF, the County of Stanislaus, a Political Subdivision of the State of California, has authorized the execution of this Lease Agreement in duplicate by the Chairman of its Board and by its Board Clerk under authority of Resolution No. 2009-644, adopted by the Board Supervisors on the 22nd day of September, 2009.

COUNTY OF STANISLAUS, a political Subdivision of the State of California

By 

Richard W. Robinson
Chief Executive Officer

APPROVED AS TO FORM:

By 

Thomas E. Boze
Deputy County Counsel

APPROVED AS TO CONTENT

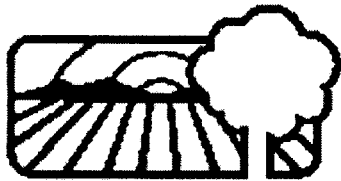
DEPARTMENT OF PUBLIC WORKS

By 

Matt Machado
Director, Public Works

The following draft minutes are scheduled for approval at the next regular City Council meeting.

*and via conference call:
3417 Melgren Ave.
Modesto, CA 95356



MODESTO CITY COUNCIL

www.modestogov.com

MINUTES

City of Modesto
CITY COUNCIL MEETING*
Chambers, Basement Level
Tenth Street Place, 1010 10th Street
Modesto, California
Wednesday November 04, 2009, at 5:30 p.m.

Roll Call - Present: Councilmembers Hawn, Keating, Lopez, Marsh, O'Bryant, Olsen, Mayor
Ridenour
Absent: None

Pledge of Allegiance to the Flag

Invocation: Wayne Bridegroom, Central Baptist Church

City Clerk's Announcements - Item 7 removed from Agenda

Declaration of Conflicts of Interest – None

Reports from Closed Session - City Attorney Wood reported on Closed Session matters

PUBLIC COMMENT PERIOD

None.

CONSENT ITEMS – ROLL CALL VOTE REQUIRED: Items 1 through 6

CONSENT ITEMS

Consent

1. Consider approving the minutes of the regular City Council meeting of October 27, 2009. (Funding Source: Not Applicable)
 - Motion approving recommended.

City Clerk; Stephanie Lopez, 577-5396, slopez@modestogov.com

ACTION: Motion (Lopez/Hawn; 7/0) approving the October 27, 2009 City Council minutes.

Consent

2. Consider authorizing the award of proposal and contract for the purchase and installation of seven (7) pay-per-space parking machines for the Public Works Department, Fleet Services Division, to Bay Cities Automatic Gates, San Carlos, CA, for an estimated total cost of \$131,669.48. (Funding Source: CIP)

- Resolution authorizing the award of proposal and contract for the purchase and installation of seven (7) pay-per-space parking machines for the Public Works Department, Fleet Services Division, to Bay Cities Automatic Gates, San Carlos, CA, and authorizing the Purchasing Manager, or his designee, to issue a purchase order for an estimated total cost of \$131,669.48. recommended.

Finance; Ken Masasso, 577-5420, kmasasso@modestogov.com

ACTION: Resolution 2009-526 (Lopez/Hawn; 7/0) authorizing the award of proposal and contract for the purchase and installation of seven (7) pay-per-space parking machines for the Public Works Department, Fleet Services Division, to Bay Cities Automatic Gates, San Carlos, CA, and authorizing the Purchasing Manager, or his designee, to issue a purchase order for an estimated total cost of \$131,669.48.

Consent

3. Consider approving the Monthly Budget Adjustment report for October 2009. (Funding Source: Various Funds)

- Resolution amending the Fiscal Year 2009-2010 annual budget recommended.

Finance; Terri Swearingen, 577-5378, tswearingen@modestogov.com

ACTION: Resolution 2009-527 (Lopez/Hawn; 7/0) amending the Fiscal Year 2009-2010 annual budget.

Consent

4. Consider approving staff's recommendation to accept the report on Xclamation Fest 2009 held on July 18, 2009 in downtown Modesto by Chris Ricci Presents, Inc. (Funding Source: No City funds are expended. Promoter reimburses City for use of City staff)

- Resolution accepting the report on Xclamation Fest 2009 held on July 18, 2009, in downtown Modesto recommended.

Parks, Recreation & Neighborhoods and Police; Lisa Forester, 577-6480, lforester@modestogov.com

ACTION: Resolution 2009-528 (Lopez/Hawn; 7/0) accepting the report on Xclamation Fest 2009 held on July 18, 2009, in downtown Modesto.

Consent

5. Consider approving the purchase of three police canines and the associated costs for their purchase and amending the Fiscal Year 2009-2010 budget in the amount of \$22,600. (Funding Source: Seized Forfeitures)

- Motion approving the purchase of three police canines and the associated costs for their purchase, and authorizing the City Manager, or his designee, to execute the necessary documents recommended.
- Resolution amending the Fiscal Year 2009-2010 Budget, estimating revenue of

\$22,600 from asset forfeitures to Police Operations for the purchase of three police canines and the associated costs for their purchase recommended.
Police; Ron Cloward, 572-9664, clowardr@modestopd.com

ACTION: Motion (Lopez/Hawn; 7/0) approving the purchase of three police canines and the associated costs for their purchase, and authorizing the City Manager, or his designee, to execute the necessary documents.

ACTION: Resolution 2009-529 (Lopez/Hawn; 7/0) amending the Fiscal Year 2009-2010 Budget, estimating revenue of \$22,600 from asset forfeitures to Police Operations for the purchase of three police canines and the associated costs for their purchase.

Consent

6. Consider approving a five-year lease agreement with Stanislaus County for Stanislaus Regional Transit (StaRT) to use the Modesto Transportation Center. (Funding Source: Transit Fund)

- Resolution approving an Agreement with Stanislaus County for the lease of space at the City of Modesto Transportation Center; and authorizing the City Manager, or his designee, to execute the Agreement recommended.

Public Works; Fred Cavanah, 577-5298, fcavanah@modestogov.com

ACTION: Resolution 2009-530 (Lopez/Hawn; 7/0) approving an Agreement with Stanislaus County for the lease of space at the City of Modesto Transportation Center; and authorizing the City Manager, or his designee, to execute the Agreement.

COUNCIL COMMENTS & REPORTS

None.

CITY MANAGER COMMENTS & REPORTS

None.

UNFINISHED BUSINESS

Removed from Agenda

7. Consider approving an agreement with Holmes International for the development and implementation of a Fats, Oil, and Grease (FOG) Control and Prevention Program in an amount not to exceed \$50,000. (Funding Source: Wastewater Fund)

- Resolution approving an Agreement with Holmes International for the development and implementation of a Fats, Oil and Grease Control and Prevention Program in an amount not to exceed \$50,000, and authorizing the City Manager, or his designee, to execute the Agreement recommended.

Public Works ; Gary DeJesus, 577-6255, gdejesus@modestogov.com

ACTION: Matter removed from Agenda.

MATTERS TOO LATE FOR THE AGENDA

None.

ADJOURNMENT

This meeting adjourned at 5:35 p.m. and returned to Closed Session matter regarding employee evaluations.

CLOSED SESSION

Closed Session Matters Heard Prior to and After Meeting
PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Pursuant to Section 54957(b)(1)
of the Government Code)

Title: City Manager
City Attorney
City Clerk
City Auditor

Attest: _____
Stephanie Lopez, City Clerk



**CITY OF MODESTO
COUNCIL AGENDA REPORT**

DATE OF MEETING:

November 4, 2009

Date: September 29, 2009

TO: Mayor & City Council
THROUGH: Greg Nyhoff, City Manager
FROM: Nick Pinhey, Director of Public Works
SUBJECT: Lease Agreement with Stanislaus County for Downtown Transportation Center
CONTACT: Fred Cavanah, Transit Manager, fcavanah@modestogov.com, 577-5298

DESCRIPTION:

Consider approving a five-year lease agreement with Stanislaus County for Stanislaus Regional Transit (StaRT) to use the Modesto Transportation Center. (Funding: Revenue Source – Transit Fund)

FISCAL IMPACT:

The new lease is for an initial five- year period effective July 1, 2009, with options for three additional five-year extensions. No increase is being sought in the first year of this contract. The County would pay the City \$25,000 during the first year with the payment increasing 3% each year. The revenue will support the Transportation Center operating costs.

BACKGROUND:

For over 15 years Stanislaus County has leased three bus bays at the Downtown Transportation Center for the StaRT countywide bus system. This arrangement allows for riders to transfer from one system to another easily.

COMMITTEE RECOMMENDATION:

This item was not reviewed by a committee.

STRATEGIC PLAN ELEMENT:

Providing for interconnectivity between different transit systems at the Transportation Center is consistent with the strategic plan.

RECOMMENDED COUNCIL ACTION:

Resolution approving an Agreement with Stanislaus County for the lease of space at the City of Modesto Transportation Center; and authorizing the City Manager, or his designee, to execute the Agreement.

Approved by:

Dennis Turner, Deputy Director of Public Works

Nicholas A. Pinhey, Director of Public Works

Greg Nyhoff, City Manager

Attachments: Resolution

**MODESTO CITY COUNCIL
RESOLUTION NO. 2009-**

**RESOLUTION APPROVING AN AGREEMENT WITH STANISLAUS COUNTY
FOR THE LEASE OF SPACE AT THE CITY OF MODESTO
TRANSPORTATION CENTER AND AUTHORIZING THE CITY MANAGER,
OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT**

WHEREAS, the City of Modesto Downtown Transportation Center was designed to be an intermodal public transit facility, and

WHEREAS, a lease agreement was entered into by the City of Modesto and Stanislaus County on the 14th Day of December 1993 to lease space in the Modesto Transportation Center located at 1001 Ninth Street, Modesto, and

WHEREAS, the Stanislaus County transit service (Stanislaus Regional Transit) has been using the Center as a transfer point for over fifteen years, and

WHEREAS, the City and County desire to continue joint use of this key transit facility, and

WHEREAS, the Stanislaus County Board of Supervisors approved a new five-year agreement with the City of Modesto for use of the Transportation Center,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby approves an Agreement with Stanislaus County for the lease of space at the City of Modesto Transportation Center.

BE IT FURTHER RESOLVED that the City Manager, or his designee, is hereby authorized to execute the Agreement.

The forgoing resolution was introduced at a regular meeting of the Council of the City of Modesto on the 4th day of November, 2009, By Councilmember ?, who moved its adoption, which motion being duly seconded by Councilmember ?, was upon roll call carried and this resolution adopted by the following vote:

AYES: Councilmembers:

NOES: Councilmembers

ABSENT: Councilmembers

ATTEST: _____
STEPHENIE LOPEZ, City Clerk

(SEAL)

APPROVED AS TO FORM

By: _____
SUSANNA WOOD, City Attorney