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THOMAS M. MILLER, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603

TELEPHONE: 530/889-4030

FAX: 530/889-4023

www.placer.ca.gov

To: The Honorable Board of Supervisors

From: Thomas M. Miller, County Executive Officer

By: Michael E. Paddock, Senior Management Analyst

Date: March 20, 2007

Subject:

Historic Courthouse - Transfer of facilities funding responsibility under the provisions and requirements of the Trial Court Facilities Act of 2002.

Action Requested:

The following actions are requested by your Board to implement the transfer of trial court facility funding responsibility and operation of the four trial court facilities of the Placer County Historic Courthouse to the Administrative Office of the Courts, AOC under the provisions and requirements of the Trial Court Facilities Act of 2002:

1. Adopt the attached County Resolution to approve the transfer of responsibility of trial court facilities funding and operation of the four courtrooms of the Auburn Historic Courthouse.
2. Adopt the attached Memorandum of Agreement, MOA with the Judicial Council of California, Administrative Office of the Courts, AOC that documents the terms and conditions of transfer and as the document of recordation to establish the public record of this action.
3. Approve the attached Transfer Agreement with the Administrative Office of the Courts, AOC, and all exhibits and attachments contain therein.
4. Approve the attached Memorandum of Understanding, MOU with the Administrative Office of the Courts and the Department of Facilities Services to operate and provide maintenance services and repair to the court exclusive area after transfer of responsibility and as an expense to the Administrative Office of the Courts.
5. Authorize the first quarterly payment (\$43,283.50) of the annual County Facility Payment, CFP, as required by the Trial Court Facility Act of 2002 and subsequent quarterly payments as required by the Act.

6. Authorize the Director of Facilities Services to record the Memorandum of Agreement, MOA and any other action, activity or requirement of the AOC to complete the transfer of responsibility closing.

Introduction:

The Trial Court Facilities Act of 2002 requires the transfer of responsibility for the funding and operation of all the trial court facilities in the State from counties to the Administrative Office of the Courts by June 30, 2007. This legislation follows other important court reform measures including the Trial Court Funding Act (AB 233) approved in 1997 that transferred responsibility for funding court operations (but not facilities responsibility) from counties to the State. The Act also created the Task Force on Court Facilities to investigate the matters and issues related to court facilities and make recommendations that would establish the logical and appropriate level of government responsible for trial court facilities. The Task Force conducted its investigation and issued a Final Report on October 31, 2001 with the recommendation that trial court facilities funding and operations responsibility should transfer from local government to the AOC. The rationale and logic for this recommendation is derived from certain core conclusions including the fact that the state government is responsible for court operations and programs but not the facilities provided for these activities. The State is also responsible for creating new judgeships and this is the impetus for new facilities and therefore this authority should also include the responsibility and expense of court facilities.

The Trial Court Facilities Act of 2002 describes in the detail the legal requirements and provisions under which the transfer of responsibility passes from counties to the AOC. The key provisions of transfer are outlined below:

- Upon transfer of a courtroom facility the County is relieved of its financial responsibility for providing and operating the transferred facility under section 70311 of the Government Code.
- The negotiations for transfer must take place between July 1, 2003 and June 30, 2007 but transfers may not occur before July 1, 2004.
- The transfer of responsibility may include property Title but transfer is also allowed (without Title) for shared facilities, facilities subject to debt upon transfer and for historic court buildings.
- The transfer of historic court buildings with Title requires approval from the County Board of Supervisors.
- The Judicial Council through the Administrative Office of the Courts, AOC represents the State in the transfer negotiations including the administration, maintenance and construction of court facilities after transfer.
- A Transfer Agreement between the AOC and the County must be negotiated and approved before transfer of responsibility may occur. A Transfer Agreement is required for each court or building that contains a court facility.

Background:

Transfer of Responsibility / Transfer Documents:

The transfer of responsibility means that the County shall provide entitlement to the AOC for the perpetual and exclusive use of court facilities in the building under the terms and conditions of the Transfer Agreement. It also means that the AOC has accepted the grant of entitlement from the County and assumes responsibility for the court facilities. The assumption of responsibility by the AOC after transfer means the financial obligation of providing, operating, maintaining and renovating the court facilities.

Equally important in this transfer is the understanding that Title to the Courthouse shall remain with the County as the original and permanent owner of this historic structure. The Act (Section 70329) allows the transfer of responsibility under certain conditions without transfer of Title for historic buildings.

Once the transfer of responsibility occurs for the Historic Courthouse the County is permanently relieved of its legal responsibility and financial obligation to provide four courtroom facilities under Section 70311 of the Government Code. However, the County must pay an annual fixed amount to the AOC, known as the County Facility Payment, or CFP as a condition of transfer as required by the Act. The annual payment, CFP for the Historic Courthouse is \$173,134 and this amount is based on the costs of operating and maintaining the court facility from 1995 through 2000. The CFP also includes the application of an inflation index to the date of transfer but the payment will remain fixed without any further increases in the future after the transfer occurs.

Transfer Agreement:

The Trial Court Facility Act of 2002 requires a separate transfer agreement for each building that is transferred from the County to the AOC. A Transfer Agreement for the Historic Courthouse has been negotiated between the County Transfer Team and the Administrative Office of the Courts. The form of the agreement and the specific terms and conditions reflect the unique nature of the court building and function and it meets all of the requirements of the Act for transfer. Besides the core element of the Agreement that defines transfer as described above there are numerous conditions, restrictions and other requirements that define and guide both the transfer process and post transfer activities and responsibilities. The Transfer Agreement is comprehensive and includes requirements, conditions and provisions that affect among other things; parking, security related areas, insurance, criminal background screening of individuals having access to the court, use and modification of exclusive use areas and the County Facility Payment or CFP.

Under the Agreement the County is obligated to provide the same level of parking that existed on October 1, 2001. This includes on-site parking (77 spaces) for the court of both reserved and unreserved spaces and offsite parking (88 spaces) for jurors. If, in the future the offsite parking becomes unavailable for jurors of the Court the County is

obligated to provide alternate and comparable parking at no cost to the AOC. The security related areas of the building that includes holding cells, vehicle sally-port and the secured stairways and other corridors will, after transfer, become the responsibility of the AOC but the County must ensure these areas meet the applicable State building requirements for such areas and facilities. The AOC has informed the County that the security related areas of the Historic Courthouse meet these building requirements. The Agreement also identifies insurance provisions and other requirements including coverage for property damage and general liability. The AOC provides workers compensation insurance for all of its court employees and officials. Under the Agreement the County will maintain its current insurance coverage for the court building and the AOC will be charged its proportional share of insurance costs. The Agreement also contains an indemnification provision that applies to both parties and serves to protect the County and the AOC from any willful or negligent acts of its own employees, agents or contractors. The Agreement also requires the County to conduct criminal background screening for new employees and contractors that will have access to areas of the court not accessible to the public including judge's chambers, restrooms, break rooms and other similar restricted areas. Employees and contractors not screened or approved for access to the restricted areas may be escorted and their activities monitored by approved county staff and as a shared cost to the AOC. Exemptions for non-approved staff to access the restricted areas of the building may also be granted by the AOC under the provision of this Agreement.

After transfer of responsibility the AOC will have exclusive and perpetual use of its court area of the building and will be responsible for the on-going oversight, management, operation, maintenance and repair at its own expense and cost of this occupied space. The court exclusive area begins on the second floor of the building and continues to the fourth floor. The AOC will also have the right to make alterations or additions to its court exclusive area subject to written notice to the County of such plans and the County's review of these plans to ensure that the additions or alterations do not conflict with the historic character, nature, building systems or other features of the Court Facility. The AOC will also have access to both the county exclusive area and the common areas of the building after transfer as it now exists. In addition, the AOC will pay for the maintenance and operations of the common area of the building and grounds and major improvements based on its occupancy of the building, or about 77% of these costs.

AOC - Memorandum of Agreement:

In addition to a Transfer Agreement for each court facility or court building to be transferred under the Act a Memorandum of Agreement or MOA between the County and the AOC must be completed. The AOC has developed the form and content of this MOA and it is incorporated within the Transfer Agreement as Exhibit E. The MOA documents the action of the Board of Supervisors to transfer responsibility of the court facility to the AOC without transfer of Title and granting exclusive and perpetual use of the court facility to the AOC. The MOA will also serve as the recording document to create a public record of this transfer.

A County Authorizing Document, in the form of a County Resolution or other action of your Board is also required as the final transfer document. This document or Resolution certifies that the County has taken the necessary steps to designate signature authority for the Transfer Agreement and any other required transfer documents and that the County will perform its obligations under the Agreement. A Resolution has been prepared for approval by your Board that contains these provisions and it is attached to this memorandum for your approval. For purposes of this transfer the Chairman of the Board of Supervisors is designated under the County Resolution as the authorized signatory. This signatory authority is also applied to a separate agreement for providing building operations and maintenance services from the County to the AOC within the court exclusive area of the building after transfer occurs. This latter Agreement is discussed in more detail below.

AOC – Memorandum of Understanding – Building Maintenance and Operation Services:

As stated above and under the terms and provisions of the Transfer Agreement the AOC, from and after the date of transfer is responsible for the ongoing oversight, management, operation, maintenance and repair of its exclusive use area at its own expense and cost. The AOC may also contract with the County or any other individual or firm to perform these services. The AOC has requested that the County through the Department of Facilities Services provide these services under a Memorandum of Understanding or MOU. Since the County retains ownership of the Courthouse and currently provides these services to all areas of the building and to ensure continuity of these services and to preserve and protect the historic nature of the building it is recommended that the County enter into an MOU with the AOC for building maintenance services of the court exclusive area. The MOU establishes a system of work authorization approvals from the AOC to the County to respond to any repairs, maintenance, emergency services requests, or other identified needs of the Court. The AOC will reimburse the County for all expenses related to this services agreement including labor, materials and administration. The initial term of the MOU is for a one year period ending June 30, 2008 with three successive one year terms thereafter. A copy of the MOU is attached to this memorandum for review and approval.

Fiscal Impact:

As a result of this transfer the County is obligated to pay, in perpetuity, a fixed sum of approximately \$173,134 each year to the AOC as the County Facility Payment, or CFP. This amount represents the actual costs to the County of operating and maintaining the Historic Courthouse from FY1995-1996 through FY1999-2000. The Trial Court Facility Act of 2002 requires a CFP for each court or court building transferred to the AOC to relieve the County of its responsibility to provide court facilities and to fund their operational costs and other expenses under Section 70311 of the Government Code. The CFP provides a continuous, but limited revenue source to the AOC so they may continue to fund the operation and maintenance of their court exclusive area of the building from and after the date of transfer.

The CFP for the Historic Courthouse was approved by the State Department of Finance on January 11, 2007. The CFP documents the operating and maintenance expenses for the mechanical systems of the building, the alarm and fire systems and for maintenance and repair work. It also documents utility expenses for natural gas, electricity, water, sewer, solid waste disposal and propane. For purposes of the CFP the utility cost is based on consumption of each utility consumed (e.g. gas, electric, water etc.) times the average monthly rate for each of these expenses in FY1999-2000. The only exception to this calculation method is for sewer expenses which are based on the average cost over the period of FY1995-1996 through FY1999-2000. Insurance expenses for general liability, property and fire coverage is also included in the calculations of the CFP.

The CFP amount for the Historic Courthouse includes an inflation index factor that is applied to the cost of the CFP for each fiscal year from FY1995-1996 through FY1999-2000 to reflect an estimate of current operating expenses of the Courthouse on the date of transfer. Over this five year period the average inflation index is approximately 29%. However, except for one final adjustment in the CFP by the AOC for the actual inflation index amount, the CFP paid by the County to the AOC will remain fixed and will not change. The final inflation adjustment to the CFP may not occur for several months after the date of transfer and it is likely that this may result in an increase in the final and fixed amount of the CFP.

Future Transfers:

It is the goal of the County Court Facility Transfer Team to complete the transfer of all the remaining court facilities of the County before the end of June 2007. On June 30, 2007 the authority of the Trial Court Facilities Act of 2002 will expire and therefore all transfers must be completed before or on that date. The remaining court facilities include all of the courts consolidated for replacement by the new Courthouse of the South Placer Justice Center (ten courtrooms) and the single courtrooms of the Main Jail, Juvenile Detention Center and the Tahoe Justice Court. However, the top priority for the County in these negotiations is the transfer of responsibility and Title to the new courthouse of the South Placer Justice Center. To maximize the benefit to the County from the Trial Court Facility Act of 2002 and acknowledging the short period of time that remains for these transfers the County team will focus its resources and efforts to complete the transfer of the new Courthouse of the South Placer Justice Center.

Attachments:

Transfer Agreement
County Resolution
MOU – Maintenance Services

Cc

Anthony La Bouff, County Counsel
Gerald Carden, Chief Deputy County Counsel
Rich Colwell, Chief Assistant County Executive Officer
Mike Boyle, Assistant County Executive Officer
Jim Durfee, Director, Facilities Services
Mary Dietrich, Assistant Director, Facilities Services
Jeannette Wong, Senior Real Estate Analyst, Administrative Office of the Courts

Before the Board of Supervisors County of Placer, State of California

In the matter of:

A Resolution to implement the transfer of trial court facilities funding and operation of the court facilities located in the Placer County Historic Courthouse consistent with the recommendations of the Task Force on Court Facilities and as enacted by the Trial Court Facilities Act of 2002, SB 1732 (Escutia) – Chapter 1082, Statutes of 2002.

Resol. No: _____

Related to Ord. No: _____

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held on _____ .

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chairman, Board of Supervisors

Attest:
Clerk of said Board

WHEREAS, the trial courts have evolved as county institutions since statehood reflecting the needs of the local judiciary and the culture and resources of local county government, and

WHEREAS, over the past decade or more, important reforms have occurred to transfer the local courts from county funding and operation to state responsibility as institutions of the judiciary branch, and

WHEREAS, specific and significant legislative action has occurred since 1997 to reform trial court operations beginning with the Lockyer-Isenberg Trial Court Funding Act of 1997, AB 233 – Escutia and Pringle, that transferred responsibility for funding court operations from county local government to the State, and

WHEREAS, the Trial Court Funding Act of 1997 also created the Task Force on Trial Court Employees and Court Facilities to deal with the two major issues left unresolved by the Act, namely, the employment status of court employees and the responsibility for the funding and operation of court facilities, and

WHEREAS, the Task Force on Trial Court Facilities have completed their study and issued a Final Report that contains key recommendations including the transition, or transfer of responsibility for funding and operating court facilities from local county government to the State, and

WHEREAS, the recommendations of the Task Force have been adopted by the legislature under the Trial Court Facilities Act of 2002, SB 1732 (Escutia) – Chapter 1082, Statutes of 2002 and signed by the Governor on September 29, 2002, that requires the transfer of the responsibility for trial court facilities funding and operation from local county government to the State by June 30, 2007 under the specific provisions of the Act and local agreement and negotiations between the Judicial Council and the Placer County Board of Supervisors, and

WHEREAS, the Board of Supervisors, on April 20, 2004 approved a Memorandum of Understanding, or MOU with the Superior Court and the Administrative Office of the Courts, (“AOC”), that establishes the legal obligation and number of trial court facilities of the County to be transferred under the provisions of Trial Court Facilities Act, SB 1732, including a total of four courtrooms of the Placer County Historic Courthouse in Auburn, and

WHEREAS, the transfer of responsibility for trial court facilities funding and operations of the four courtrooms of the Placer County Historic Courthouse and all the other court facilities as described in the local MOU to the State is required under SB 1732 and will also result in a significant benefit to the County in the form of relief of responsibility for providing court facilities under Government Code Section 70311

WHEREAS, the Placer County Court Facility Transfer Team has completed its negotiations with the AOC including the terms of a Transfer Agreement, a Building and Maintenance Services MOU and the County Facility Payment obligation, (“CFP”)

NOW, THEREFORE, BE IT RESOLVED,

That the Board of Supervisors declare the Placer County Historic Courthouse to be an historic building containing court facilities as defined in the Act and also resolve to retain Title to the Courthouse after transfer of responsibility under Section 70329, and

That the Board of Supervisors approves the transfer of responsibility for trial court funding and operation of the four courtroom facilities of the Placer County Historic Courthouse to the AOC and authorizes the Chairman of the Board to sign the Transfer Agreement, and

That the Board of Supervisors approves the Memorandum of Agreement, MOA, with the Administrative Office of the Courts to execute transfer of responsibility under the Trial Court Facilities Act of 2002 and authorizes the Chairman of the Board of Supervisors to sign the Agreement, and

That the Board of Supervisors approves the Building and Maintenance Services Memorandum of Understanding, MOU, with the Administrative office of the Courts, AOC for building maintenance services provided to the AOC by the County after transfer of responsibility and authorizes the Chairman of the Board to sign the MOU.

BE IT FURTHER RESOLVED AND ORDERED

That the Board of Supervisors authorizes the Director of Facilities Services to record the Memorandum of Agreement to legally document the transfer of responsibility or any other activity or requirement of the AOC to execute the closing of the transfer of responsibility, and

That the Board of Supervisors authorize the first quarterly payment of the annual payment of the County Facility Payment, or CFP as required by the Trial Court Facilities Act of 2002 and subsequent quarterly payments as required by the Act.