

**MEMORANDUM
OFFICE OF THE
COUNTY EXECUTIVE
COUNTY OF PLACER**

TO: Honorable Board of Supervisors

FROM: Thomas M. Miller, Placer County Executive Officer
Michael E. Paddock, Senior Management Analyst

DATE: June 10, 2008

SUBJECT: Transfer of Responsibility of New Courthouse – Placer County - Bill Santucci Justice Center: Transfer of facilities funding responsibility under the provisions and requirements of the Trial Court Facilities Act of 2002 as amended.

Action Requested:

The following actions are requested of your Board to implement the transfer of trial court facility funding responsibility and operation of the new Courthouse at the Placer County - Bill Santucci Justice Center to the Administrative Office of the Courts (AOC) under the provisions and requirements of the Trial Court Facilities Act of 2002 as amended. This transfer of responsibility will result in the AOC/Superior Court vacating 10 courtrooms currently operating at various locations in the County.

1. Adopt the attached County Resolution (County Authorizing Document) to approve the transfer of responsibility of trial court facilities funding and operation of the nine courtrooms of the Courthouse located within the Placer County - Bill Santucci Justice Center to the Judicial Council Administrative Office of the Courts, AOC and deferred transfer of title to that facility.
2. Approve the attached Transfer Agreement with the Administrative Office of the Courts, AOC, and all exhibits and attachments contain therein and authorize the Chairman of the Board to sign the Agreement.
3. Authorize the first quarterly payment of the annual County Facility Payment, CFP, as required by the Trial Court Facility Act of 2002 as amended and all subsequent quarterly payments.
4. Authorize the Director of Facilities Services to sign the County Premises License Agreement (Exhibit K of the Transfer Agreement), the assignment of warranties (Exhibit E of the Transfer Agreement), and any other exhibit of the Transfer Agreement, to prepare and record the Common Area Agreement; and conduct or perform any other action, activity or requirements of the AOC to complete the Transfer of Responsibility (TOR) closing and any of the other actions as specified in the County Resolution (County Authorizing Document).

Introduction:

The Trial Court Facilities Act of 2002 required 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 followed 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 initial 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 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 were to take place between July 1, 2003 and June 30, 2007 but transfers would 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 was required for each court or building that contains a court facility.

Historic Courthouse:

On March 20, 2007 your Board approved the Transfer of Responsibility (TOR), but retained the property title of the Historic Courthouse in Auburn to the Administrative Office of the Courts under the provisions and requirements of the Trial Court Facilities Act of 2002. This was the first actual transfer of responsibility of a historic trial court in the State and set the stage for the subsequent transfers of other court facilities in Placer County.

AB 1491:

On June 30, 2007 the Trial Court Facility Act of 2002, SB 1732 (Escutia) Chapter 1082, Statutes of 2002 expired. However, only a small percentage of the total number of trial court facilities in the State had transferred before the Act expired including the 12 remaining courtrooms in Placer County.

On April 23, 2008 the Governor signed AB 1491 as an urgency measure that extended the date of transfer, under certain conditions, to December 31, 2009. In addition to the extended transfer date AB 1491 will permit the use a consolidated transfer agreement document that may streamline and expedite the transfer of all remaining court facilities. In addition, "incentives" are provided in the form of a lower County Facility Payment for all transfers completed before October 1, 2008. However, transfers will not be allowed after December 31, 2009.

Background:

New Courthouse – South Placer Justice Center:

The new Courthouse is located within the 44-acre master-planned justice services campus known as the Placer County Bill Santucci Justice Center in the City of Roseville. The Courthouse building contains

approximately 110,700 square feet of space within a separate 4.6 acre parcel of the Center that also includes parking, landscape, exterior lighting and ground water collection system.

The building is designed to operate and contain nine general purpose courtrooms, court administration and clerical support areas. It is a two-story structure with an underground level that provides an area for secure inmate holding cells with access available directly to the planned jail at the campus. The County intends to finance the purchase of the facility through the bond funding authorized by the Board in December 2007.

Unlike the previous transfer of court facilities (Historic Courthouse) for which the County retained title to the Courthouse building and land, this transfer will result in an initial Transfer of Responsibility (TOR) followed by Transfer of Title (TOT) after the last debt payment for construction of the Court building is made (the "Interim Period"). Another distinctive aspect of this transfer is that the County is not a co-occupant of the courthouse building and the AOC will assume all maintenance and operating expenses after transfer of responsibility as the exclusive occupant of the courthouse building (100% occupancy). The County will continue to provide bailiff and court security services within the court security areas under a reimbursable agreement with the County Sheriff. Although the County is not an occupant of the building, a small amount of court space (approximately 1100 square feet) consisting of five rooms for workspace and meetings with clients of the District Attorney, Probation and children services will be provided to the County under a County Premises License Agreement.

Although the County has entered into a lease/lease-purchase agreement that requires annual lease payments over a twenty year term the Director of Facility Services is in the process of negotiating and completing a purchase agreement with the leasehold owner of the courthouse building, JB Management, to acquire title to the land and the building. It is anticipated that the actual purchase will be completed by July 15, 2008.

Transfer of Responsibility/Transfer Documents:

The transfer of responsibility means that the County shall transfer to the AOC 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 possession, occupancy, and use from the County and assumes all responsibility for the court facility. The assumption of responsibility by the AOC after transfer means the financial obligation of occupying, operating, maintaining, repairing and renovating the court facilities. After transfer of responsibility and during the interim period the court will continue to occupy the building exclusively and upon the final debt payment for the building by the County the title will pass to the AOC under the terms of the Transfer Agreement.

Once the transfer of responsibility occurs for the new Courthouse, the County is permanently relieved of its legal responsibility and financial obligation to provide ten replaced courtroom facilities under section 70311 of the Government Code. These facilities at DeWitt, Colfax, Foresthill, Lincoln and Roseville, are to be vacated by the Court within 90 days of the Transfer Agreement. 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 new Courthouse is \$306,952 and this amount is based on the costs of operating and maintaining the ten relocated courtroom facilities from 1995 through 2000.

The CFP also includes the application of a one-time 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 as amended requires a separate transfer agreement for each building that is transferred from the County to the AOC although the amended Act now includes an option to use a single agreement for multiple courtroom buildings. The Transfer Agreement for the new Courthouse has been negotiated between the County Transfer Team and the Administrative Office of the Courts as a separate agreement. 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; all risk property coverage during the interim period, assignment of construction warranties, a one-year limit from the TOR date on defects that may not be covered by a warranty, and parking.

Under the Transfer Agreement the County will provide property damage coverage to satisfy the requirements of the bonded debt contract and the AOC. This coverage applies during the interim period only and after transfer of title (TOT) of the building the AOC will assume this obligation as the new title holder. The AOC will reimburse the County for the cost of this policy. The AOC will be responsible for its own liability claims arising from its use and occupancy in the courthouse.

The County will provide ongoing liability and property insurance coverage for its limited occupancy within the Courthouse under the County Premises License Agreement (Exhibit K of the Agreement). Under the terms of the Transfer Agreement, the County will also assign all construction warranties that are in effect to the AOC after the date of the Transfer of Responsibility (Exhibit E of the Agreement). In addition, the Agreement provides a one year limit on any defects that may not be covered by any construction warranty.

This one year period begins on the date of Transfer of Responsibility (TOR) and ends on the anniversary date (6-11-09). However, any defects caused by actions of the AOC will not apply to this one-year period of remedy by the County. Under the terms of the Agreement, the County will also provide a total of 484 non-exclusive court parking spaces that are adjacent to the court property. In addition, a total of 34 secured, exclusive parking spaces that are located on the court building site will be transferred to the AOC on the TOR date.

A County Authorizing Document in the form of a County Resolution of your Board is also required as part of the transfer. This 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 are necessary for the County to 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.

The final document to complete the Transfer of Responsibility is the County Premises License Agreement. The purpose of this agreement is to allow the County to occupy space in the building that is the exclusive responsibility of the AOC after transfer occurs. By the terms of this specific Agreement, the County will occupy approximately 1100 square feet consisting of five meeting rooms for clients of the District Attorney, Probation and for child services from the Health and Human Services Department.

In addition to the specific documents of closing described above, the County and the AOC will enter into a separate a Common Area Agreement to share expenses for utilities and maintenance costs of the campus area of the Justice Center. These expenses include but are not limited to the cost of utilities,

sewer, water and surface water drainage system, parking lot maintenance, landscape maintenance and repair and for outside lighting. The ratio of shared expenses will change over time based on the development of the Justice Center that will also include a County Jail Facility, county offices, Sheriff Administration office and a corporation yard area for public works related equipment. The County Transfer Team will continue to negotiate an acceptable agreement with the AOC for these shared expenses and then execute a final Agreement for signature by the Director of Facilities Services.

Fiscal Impact: – County Facility Payment – CFP:

As a result of this transfer, the County is obligated to pay, in perpetuity, a fixed sum of \$306,952 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 ten courtroom facilities and buildings that are replaced by the new 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 help 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 fund the operation and maintenance of their court exclusive area of the building from and after the date of transfer.

The CFP for the courtrooms replaced by the new Courthouse has been approved by the State Department of Finance and the County will submit an initial pro-rata payment to complete the necessary steps for the closing of Transfer of Responsibility. The CFP documents the operating and maintenance expenses for the mechanical systems of the courtroom buildings, 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. Insurance expenses for general liability, property and fire coverage is also included in the calculations of the CFP.

The CFP amount includes a one-time 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 a modest 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 October 1, 2008, but not later than December 31, 2009, when the Act will expire. After this transfer, the remaining court facilities of the County to be transferred include the single courtrooms of the Main Jail, the Juvenile Detention Center, and the Tahoe Court.

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 these final courtroom transfers without delay through the use of a single agreement.

Attachments:

Attachments:

County Resolution

A copy of the Transfer Agreement (including Exhibits A – L) on file for review at the Clerk of the Board of Supervisors

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 authorize the transfer of responsibility and deferred transfer of title of the court facilities consolidated and relocated to the Courthouse at the Placer County Bill Santucci Justice Center in the City of Roseville consistent with the Trial Court Facilities Act of 2002, as amended.

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 June 10, 2008.

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 evolved as county institutions in California 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 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 Trial Court Facilities Act of 2002 was amended by AB 1491 (Jones) to extend the date of transfer to December 31, 2009 and signed by the Governor on April 23, 2008 as an urgency measure, 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, as amended including a total of fifteen (15) courtrooms (and one mentor courtroom) as specified in Section 1 b. of the MOU, and

WHEREAS, the transfer of responsibility for trial court facilities funding and operations of court facilities at the Placer County Bill Santucci Justice Center will replace ten (10) courtrooms as described in Section 2 b. of the local MOU to the AOC as required by the Trial Court Facilities Act will also result in a significant benefit to the County in the form of relief of responsibility for providing those replaced court facilities under Government Code Section 70311, and

WHEREAS, the Placer County Court Facility Transfer Team has completed its negotiations with the AOC including the terms of a Transfer Agreement, the County Premises License Agreement and the County Facility Payment obligation, ("CFP"), and

WHEREAS, a the Placer County Court Facility Transfer Team will continue to work to produce an Agreement for an equitable share of outside common area expenses of the South Placer Justice Center campus or Common Area Agreement and will submit that Agreement for signature and recording once it has been completed by the Team,

NOW, THEREFORE, BE IT RESOLVED,

That the Board of Supervisors approves the Transfer of Responsibility for the operation, maintenance, and repair of the Courthouse of the Placer County Bill Santucci Justice Center and the deferred transfer of title of the land and improvements, after payment of bonded indebtedness, to the AOC and authorizes the Chairman of the Board to sign the Transfer Agreement on behalf of

the County and to take such further actions as provided under the Agreement and closing documents, and

BE IT FURTHER RESOLVED AND ORDERED

That the Board of Supervisors directs and authorizes the Director of Facilities Services to do all of the following:

1. Complete for signature and recording a Common Area Agreement covering the costs to operate and maintain the Placer County Bill Santucci Justice Center campus, and
2. Execute the County Premises License Agreement, and
3. Execute the Assignments of Intangible Personal Property and Construction Warranties that are assigned to the county by the developer, and
4. Complete, and execute any other document or perform any activity or action to complete the closing of the Transfer of Responsibility (TOR) under the terms and provisions of the Transfer Agreement and the Trial Court Facilities Act of 2002 as amended.

BE IT FURTHER RESOLVED AND ORDERED

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

