



Agenda Date: 6/27/2006
Agenda Placement: 6A

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Britt Ferguson for Nancy Watt - County Executive Officer
County Executive Office
REPORT BY: Margaret Woodbury, Chief Deputy County Counsel, 259-8246
SUBJECT: Agreements with the Gasser Foundation

RECOMMENDATION

County Executive Officer requests approval of and authorization for the Chair to sign the following agreements with the Peter A. and Vernice H. Gasser Foundation relating to the South Napa Homeless Shelter:

1. Amendment No. 2 to Agreement No. 5064 to modify the description of the Ground Lease to exclude a vacant portion of the leased premises not occupied by the South Napa Homeless Shelter facility, subject to compliance by County with Government Code section 65402 and, if a parcel map is not approved, Government Code section 66428;
2. Amendment No. 1 to Agreement No. 6476-2 to modify the term of the Sublease to commence on June 28, 2005 and terminate on May 18, 2006, the date when the completed South Napa Homeless Shelter commenced operations; and
3. Amendment No. 1 to Agreement No. 6476-1 to modify the description of the premises subject to the Homeless Shelter Lease and Option to Purchase contained in Exhibits A, A-1 and A-2 to clarify that the premises subject to the lease and option to purchase includes only the building and related improvements comprising the South Napa Homeless Shelter and not the underlying ground and to make technical amendments.

EXECUTIVE SUMMARY

On April 8, 2003, the Gasser Foundation and the County of Napa entered into a Ground Lease (Napa County Agreement No. 5064). The Ground Lease resulted in the Gasser Foundation leasing to the County for 99 years .99 acres of property located on Hartle Court to develop a homeless shelter. The property also included sufficient space to develop transitional housing. The description of the premises was refined by Amendment No. 1, approved on June 28, 2005.

On June 28, 2005, the Gasser Foundation and the County of Napa entered into a Sublease Agreement (Napa County Agreement No. 6476-2). This resulted in the County subleasing the .99 acre property back to the Gasser Foundation to design and construct the South Napa Homeless Shelter Facility.

On June 28, 2005, the Gasser Foundation and the County of Napa also entered into a Homeless Shelter Lease and Option to Purchase Agreement (Napa County Agreement No. 6476-1). In this Agreement, the recitals provided that it was the intention of the parties that the County would lease for 25 years the building and related improvements comprising the South Napa Homeless Shelter, with an option to purchase the facility within 1 year after completion. The term of this Agreement automatically commenced on the date of Completion of Construction of the South Napa Homeless Shelter as determined by Paragraph 6 of the Sublease. That date was May 18, 2006 when the facility commenced operations.

The County and the Gasser Foundation now wish to exclude from the Ground Lease the portion of the leased premises not occupied by the South Napa Homeless Shelter and its related improvements. This exclusion will allow the Gasser Foundation to directly lease the excluded area to the Progress Foundation. The Progress Foundation will then construct and operate transitional housing on the excluded area.

The parties also desire to clarify two other matters. First, that the Sublease terminated on the commencement of the term of the South Napa Homeless Shelter Lease and Option to Purchase Agreement on May 18, 2006. Second, that the premises subject to the South Napa Homeless Shelter Lease and Option to Purchase Agreement is comprised solely of the facility and its related improvements, exclusive of the underlying ground which remains subject to the Ground Lease.

The proposed actions will modify Napa County Agreement Nos. 5604, 6476-1 and 6476-2 to accomplish these purposes.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not itself a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

On April 8, 2003, the Gasser Foundation and the County of Napa entered into a Ground Lease (Napa County Agreement No. 5064). The Ground Lease resulted in the Gasser Foundation leasing to the County for 99 years .99 acres of property located on Hartle Court to develop a homeless shelter. The property also included sufficient space to develop transitional housing. The description of the premises was refined by Amendment No. 1, approved on June 28, 2005.

On June 28, 2005, the Gasser Foundation and the County of Napa entered into a Sublease Agreement (Napa County Agreement No. 6476-2). This resulted in the County subleasing the .99 acre property back to the Gasser Foundation to design and construct the South Napa Homeless Shelter Facility.

On June 28, 2005, the Gasser Foundation and the County of Napa also entered into a Homeless Shelter Lease and Option to Purchase Agreement (Napa County Agreement No. 6476-1). In this Agreement, the recitals provided that it was the intention of the parties that the County would lease for 25 years the building and related

improvements comprising the South Napa Homeless Shelter, with an option to purchase the facility within 1 year after completion. The term of this Agreement automatically commenced on the date of Completion of Construction of the South Napa Homeless Shelter as determined by Paragraph 6 of the Sublease. That date was May 18, 2006 when the facility commenced operations.

To facilitate construction and operation of transitional housing by Progress Foundation, the County and the Gasser Foundation now wish to exclude from the Ground Lease the portion of the premises leased under the Ground Lease which is not occupied by the South Napa Homeless Shelter and its related improvements. Because this action involves the disposition of a property interest acquired by the County, Government Code section 65402 requires that the action be referred to the Napa City Planning Commission for a report regarding conformity of the action with the City's General Plan. In addition, leases and modifications of leases of real property constitute divisions of land under the Subdivision Map Act. Therefore, unless a parcel map is approved, a waiver under Government Code section 66428 of the requirement to file a parcel map must be obtained from the City of Napa before the proposed lease amendment may take effect. The amendment of the Ground Lease to exclude the vacant area is therefore proposed to be approved contingent upon completion of both of these technical referrals to the City of Napa. These actions (65402 and 66428) were routinely approved when the property was originally leased in conjunction with the building of the homeless shelter. Thus, we believe these changes are technical in nature and do not represent a significant impediment to the Lease changes becoming operational and the Gasser Foundation and Progress Foundation having site control.

As a housekeeping matter, the parties also desire to amend the Sublease Agreement to clarify that it was the intent of the parties that the Sublease Agreement would terminate on May 18, 2006. May 18th was the Date of Commencement of the term of the South Napa Homeless Shelter Lease and Option to Purchase Agreement. Consent to such termination has been obtained from the lender who helped finance the Gasser Foundation's construction of the South Napa Homeless Shelter as required by Sections 2 and 7(b) of the Sublease Agreement.

Finally, the parties desire to amend the Homeless Shelter Lease and Option to Purchase Agreement to clarify that the property subject to the Agreement is the facility and related improvements and not the underlying land which remains subject to the Ground Lease and to make minor technical amendments to improve document clarity.

For these reasons, the County Executive Officer requests approval of the following items relating to the South Napa Homeless Shelter:

1. Approval and authorization for the Chair to execute Amendment No. 2 of Napa County Agreement No. 5064 to modify the description of the Ground Lease to exclude a vacant portion of the leased premises not occupied by the South Napa Homeless Shelter facility, contingent upon compliance by County with Government Code section 65402 regarding report by the Napa City Planning Commission relating to conformity of the exclusion with the City of Napa General Plan and with Government Code section 66428 regarding waiver by the City of Napa of the filing of a parcel map for the excluded portion.
2. Approval and authorization for the Chair to execute Amendment No. 1 of Napa County Agreement No. 6476-2 to modify the term of the Sublease to commence on June 28, 2005 and terminate on May 18, 2006, the date when the completed South Napa Homeless Shelter commenced operations.
3. Amendment No. 1 to Agreement No. 6476-1 to modify the description of the premises subject to the Homeless Shelter Lease and Option to Purchase contained in Exhibits A, A-1 and A-2 to clarify that the premises subject to the lease and option to purchase includes only the building and related improvements comprising the South Napa Homeless Shelter and not the underlying ground and to make technical amendments.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Karen Gratton