June 28, 2005

TO: Mayor and City Council

FROM: Steve Pinkerton, Director
Housing and Redevelopment Department

SUBJECT: RESOLUTION: LEASE WITH THE STATE OF CALIFORNIA FOR CINEMA PARKING AT 31 EAST CHANNEL STREET

RECOMMENDATION

It is recommended that the Council adopt a resolution authorizing a five-year lease with the State of California.

SUMMARY

The State of California owns the building at 31 East Channel Street and the adjacent parking lot with 147 parking spaces (see attached map). The City has leased the parking lot since December, 2003, and desires to again lease the parking spaces for non-business hour usage for the City Centre Cinema. The proposed lease is for a period of five years. The starting annual rent is $1,800 and the annual rent will increase five percent per year.

DISCUSSION

The State of California owns the building at 31 East Channel Street and the parking lot with 147 parking spaces. On December 17, 2003, the City entered into a one-year lease with the State of California, acting by and through its Director of General Services. The lease was for non-business hour use of the parking spaces for the City Centre Cinema.

The City wants to again lease the parking spaces for a five-year period. The starting annual rent is $1,800 and the annual rent will increase five percent per year. The previous lease expired on December 16, 2004, and the City's use was continued on a holdover basis. A payment of $1,800 was made at that time which represented 12 months rent at $150 per month.

The new lease will retroactively commence on April 17, 2005. The State will deduct $600 from the City's payment for the period of December 17, 2004, through April 16, 2005. $1,200 will be credited towards the first year's rent of $1,800 and a payment of $600 will be due.

AGENDA ITEM 6.17
RESOLUTION: LEASE WITH THE STATE OF CALIFORNIA FOR CINEMA PARKING AT 31 EAST CHANNEL STREET

ENVIRONMENTAL CLEARANCE

This project is categorically exempt under the State CEQA Guidelines (Section: 15061 (B)(3)) as specified on the attached Notice of Exemption. In accordance with Section 65402 of the Government Code, this activity/project has been determined to conform with the City's General Plan designation.

FINANCIAL SUMMARY

Rent will be paid from the Central Parking District Account No. 416-4020.

Respectfully submitted,

STEVEN J. PINKERTON, DIRECTOR
HOUSING AND REDEVELOPMENT DEPARTMENT

SJP/MW:myb

Attachments

APPROVED BY THE CITY MANAGER:

MARK LEWIS, CITY MANAGER
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING A FIVE-YEAR LEASE WITH THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ITS DIRECTOR OF GENERAL SERVICES—STOCKTON STATE BUILDING, 31 E. CHANNEL STREET

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. That certain Lease (Lease No. L-2164) between the City of Stockton and the State of California, acting by and through its Director of General Services, is hereby approved.

2. That the City Manager is hereby authorized and directed to execute said Lease, a copy of which is attached as Exhibit A and by reference made a part hereof, on behalf of the City of Stockton.

3. That said Lease will have a term of five years (April 17, 2005-April 16, 2010); rent: $1,800 a year; following years' rent will be increase five percent (5%) per year

4. That with regard to environmental clearance, it has been determined that this action/project is categorically exempt under the State CEQA Guidelines (Section: 15061(B)(3)) as specified in the Notice of Exemption.

5. In accordance with Section 65402 of the Government Code, this activity/project has been determined to conform with the City's General plan designation.

PASSED, APPROVED and ADOPTED ____________________________

EDWARD J. CHAVEZ, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
STATE OF CALIFORNIA

PARKING LOT LEASE

LEASE COVERING PREMISES LOCATED AT
Stockton State Building
31 East Channel Street
Stockton, California

AGENCY
DEPARTMENT OF GENERAL SERVICES

Lease No.: L-2164

This Lease, dated for reference purposes only, March 14, 2005, is made by and between the State of California, acting by and through its Director of the Department of General Services, hereinafter called STATE, and the City of Stockton, hereinafter called LESSEE.

RECITALS:

WHEREAS the STATE owns an office building with approximately 52,200 square feet of improved parking space, at 31 East Channel Street, Stockton, California; and

WHEREAS, pursuant to Section 14670.12 of the Government Code, the Department with the consent of the state agency concerned, may lease real property owned by the STATE, not exceeding five (5) acres, for a period not to exceed twenty-five (25) years to governmental entities to further the state’s mission for providing emergency services, where the Director deems it is in the best interests of the STATE; and

WHEREAS the LESSEE has a need to provide parking for the City Centre Cinemas (Cinema) located at 222 North El Dorado Street, Stockton, California; and,

WHEREAS the STATE desires to lease to LESSEE said Stockton State Building parking lot during non-business hours; and,

WHEREAS it is the STATE'S policy to make available facilities under its control, for such purposes, when it is for the benefit of the public and same is consistent with the STATE's programs and needs; and,

WHEREAS it is in the best interest of the STATE that such a lease be consummated on the terms and conditions herein contained.

NOW, THEREFORE, it is mutually agreed between the parties hereto as follows:

WITNESSETH:

DESCRIPTION

1. STATE does hereby lease to LESSEE, and LESSEE does hereby hire from STATE, limited use of approximately 147 spaces in the 52,200 square feet parking lot, located at 31 East Channel Street, Stockton, California, hereinafter called the Premises, as shown on the attached Exhibit “A”, consisting of one (1) page, attached hereto and incorporated by this reference.
2. The term of this Lease shall commence on the 17th day of April, 2005, and shall terminate on the 16th day of April, 2010, with such rights of termination as may be hereinafter expressly set forth.

3. LESSEE shall make rental payments for the Premises annually, in advance, beginning on the Commencement Date of this Lease in the sum of:

   $1,800 per year from April 17, 2005 through April 16, 2006.

   (STATE is in receipt of $1,200 as partial payment for the first year's rent. The balance of the first year's rent due on the Commencement Date of this Lease is $600.)

   $1,890 per year from April 17, 2006 through April 16, 2007.

   $1,985 per year from April 17, 2007 through April 16, 2008.

   $2,084 per year from April 17, 2008 through April 16, 2009.

   $2,188 per year from April 17, 2009 through April 16, 2010.

   Checks shall be made payable to the State of California Department of General Services (L-2164).

4. LESSEE agrees to use the leased Premises for Cinema parking only and no other purposes whatsoever. Use of said Premises by LESSEE is limited to the hours from 6:00 p.m. until 6:00 a.m. on weekdays and from 10:00 a.m. until 6:00 a.m. on weekend days. STATE has the right to reserve without notice an adequate number of spaces at all times to accommodate employees of the building who may need to park after regular business hours.

5. The parties hereto agree that either party may terminate this Lease at any time during the term hereof by giving notice to the other party in writing fifteen (15) days prior to the date when such termination shall become effective.

6. Any holding over after the expiration of said term or any extension thereof, with the written consent of the STATE expressed or implied, shall be deemed a tenancy only from month to month and shall otherwise be on the terms and conditions specified so far as applicable. A rental amount of $200.00 (Two Hundred Dollars) per month shall be paid monthly, in advance, during the holding over period. Payments shall be made to:

   Department of General Services
   Attn: Accounts Receivable Unit, PAL-L-2164
   Post Office Box 989035
   West Sacramento, California 95798-9053

7. The STATE will provide electricity for lighting to the Premises during the term of the lease.

8. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by electronic facsimile to the Telefacsimile numbers set forth below.
All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed as provided above, on the date of receipt or rejection, or (iii) if given by electronic facsimile, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time. so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

To the LESSEE:
City of Stockton
Director of Housing and Redevelopment
22 E. Weber Avenue, Room 350
Stockton, California 95202
Telephone: (209) 937-8694
Telefacsimile: (209) 937-8822

To the STATE:
Department of General Services
Real Estate Services Division
State Owned Leasing and Development
707 3rd Street, Fifth Floor
West Sacramento, CA 95605
Telephone: (916) 375-4025
Telefacsimile: (916) 375-4029

Notice of change of address or Telefacsimile number shall be given by written notice in the manner described in this section. LESSEE is obligated to notice all state offices listed above and the failure to provide notice to all State offices will be deemed to constitute a lack of notice.

9. LESSEE shall not assign this Lease in any event and shall not sublet the leased Premises or any part thereof and will not permit the use of the leased Premises by anyone other than the LESSEE without prior written consent by the STATE.

10. LESSEE shall provide security for the Premises during hours of use. LESSEE assumes all responsibility for protection of patrons, agents and invitees from acts of third parties.

11. LESSEE agrees that there will be no charge to patrons, agents and invitees for use of the parking lot during LESSEE's hours of use.

12. LESSEE accepts the Premises as being in good order, condition and repair, and agrees that on the last day of the term, or sooner termination of this Lease, to surrender up to STATE the Premises with any appurtenances or improvements therein, in the same condition as when received, reasonable use and wear thereof and damage by act of God or by the elements excepted.
CONDITION OF PREMISES
(CONT.)

LESSEE has visited and inspected said Premises and it is agreed that the number of parking spaces stated herein is only an approximation and that the STATE does not hereby warrant or guarantee the actual number of parking spaces included hereunder.

SIGNAGE

13. LESSEE shall not post any signs on Premises without first obtaining written approval from the Department of General Services, Office of Fleet Administration.

MAINTAINING PREMISES

14. LESSEE agrees to maintain said Premises in compliance with the sanitation laws and regulations of the State of California, and in compliance with all other laws of the STATE. LESSEE agrees to clean parking lot and remove all litter, trash, cans, bottles, etc. from the parking lot as well as the surrounding landscaped areas after each use. Clean up to be completed before 6:00 a.m. each morning. Any vehicles remaining in the parking lot after 6:00 a.m. each morning shall be subject to the parking fees charged for day use of the lot. Any vehicles parked on the Premises for more than 24 hours shall be towed away at LESSEE's expense.

AMERICANS WITH DISABILITIES ACT

15. LESSEE shall comply with all federal requirements established under 28 Code of Regulations, Part 36, Americans with Disabilities Act, in order to make programs accessible to all participants and to provide equally effective communications. LESSEE is aware that for LESSEE's use of the Premises, ingress and egress of the parking lot may not comply with the Americans with Disabilities Act. LESSEE agrees that compliance with the Americans with Disabilities Act is solely the responsibility of the LESSEE.

PROTECTION OF PREMISES

16. No dumping of refuse by LESSEE is permitted in any area of the Premises, and LESSEE shall not commit or suffer to be committed any waste or nuisance upon the Premises; and LESSEE agrees not to cut or remove any trees or other landscaping thereon except as approved in writing by STATE, and LESSEE further agrees that it shall at all times exercise due diligence in the protection of the Premises against damage or destruction by fire or other cause.

LOSSES

17. The STATE will not be responsible for losses or damage to personal property, equipment or materials of the LESSEE. All losses shall be reported to the STATE immediately upon discovery.

HOLD HARMLESS

18. This Lease is made upon the express condition that the STATE is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, except those arising out of the sole negligence of the STATE. LESSEE agrees to defend, indemnify and save harmless the STATE from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring. LESSEE further agrees to provide necessary Workers Compensation Insurance for all employees of LESSEE upon said Premises at the LESSEE's own cost and expense.

INSURANCE

19. LESSEE shall furnish a certificate of insurance with the STATE's Lease Number (L-2164) indicated on the face of said certificate, issued to STATE with amounts of Commercial General Liability of at least $1,000,000 per occurrence, Fire Legal Liability of at least $500,000 and Automobile Liability of a minimum of $1,000,000 per accident for bodily injury and property damage, naming the State of California, its officers, agents and employees as additional insureds.
LESSEE's coverage shall be at least as broad as the California Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Said certificate of insurance shall be issued by an insurance company with a rating that is acceptable to the Department of General Services, Office of Risk and Insurance Management. STATE reserves the right to review and adjust insurance requirements as necessary during the term of this lease.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the insurance coverage required by this section. The certificate of insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to STATE. LESSEE agrees that the insurance herein provided for shall be in effect at all times during the term of the lease. In the event said insurance coverage expires at any time or times during the term of this lease, LESSEE agrees to provide STATE at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than one (1) year. In the event LESSEE fails to keep in effect at all times insurance coverage as herein provided, STATE may, in addition to any other remedies it may have, terminate this lease upon the occurrence of such event.

If LESSEE is self insured, LESSEE shall provide STATE with written acknowledgement of this fact at the time of execution of this Lease. LESSEE shall annually thereafter, on the anniversary of the date of execution of this Lease, provide STATE with a written acknowledgement of the continuation of its self-insured status. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with the terms and conditions of the first Paragraph of Section 18 of this Lease.

20. LESSEE agrees that it will comply with all laws, either Federal, State, or local, existing during the term of this lease pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the LESSEE's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, and hold harmless any of these individuals against such liability. Where the LESSEE is found to be in breach of this provision due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE's direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order. In the event a government order is issued naming the LESSEE or the LESSEE incurs any liability, during or after the term of the lease, in connection with contamination which pre-existed the LESSEE's obligations and occupancy under this lease or which were not caused by the LESSEE, STATE shall hold harmless, indemnify, and defend the LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts and expenses therefor.
21. In the performance of this Lease, the LESSEE shall not discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. LESSEE shall insure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

LESSEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. LESSEE shall give written notice of its obligations under this clause to any labor organizations with which they have a collective bargaining or other Agreement. Further, LESSEE shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

Remedies for willful violations:

(a) The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(b) The STATE shall have the right to immediately terminate this lease agreement, and any loss or damage sustained by the STATE by reason thereof shall be borne and paid for by the LESSEE.

22. This lease is subject to all existing easements and rights of way. STATE further reserves the right to grant additional public utility easements as may be necessary and LESSEE hereby consents to the granting of any such easement. The public utility will be required to reimburse LESSEE for any damages caused by the construction work on the easement area.

23. During continuance in force of this Lease, there shall be and is hereby expressly reserved to STATE and to any of their agencies, contractors, agents, employees, representatives, or licensees, the right at any and all reasonable times, and any and all places to temporarily enter upon said Premises for inspection or other lawful STATE purposes.

24. LESSEE and any and all agents and employees of LESSEE shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained shall be construed as constituting the parties herein as partners.
25. LESSEE shall, at LESSEE’s sole cost and expense, comply with all the laws and requirements of all Municipal, State, and Federal authorities now in force, or which may be in force pertaining to the Premises and use of the Premises as provided by this Lease.

26. LESSEE agrees to pay all lawful taxes, assessments, or charges which at any time may be levied upon interest in this agreement. It is understood that this lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.

27. Notwithstanding any other provisions contained herein, any willful violation of the terms or conditions of this Lease or of the rules and regulations that continue for a period of ten (10) days after written notice by the STATE to LESSEE shall be grounds for immediate cancellation of the Lease and removal of the LESSEE.

28. The STATE will not be liable for any debts or claims of LESSEE that arise from the operation of this Lease.

29. If action is brought by the STATE for the recovery of any rent due under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of said leased Premises, or to protect any rights given to the STATE against LESSEE, and if the STATE shall prevail in such action, the LESSEE shall pay to the STATE such amount in attorney’s fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.

30. LESSEE acknowledges that LESSEE, its employees, contractors, subordinates and assigns are not entitled to any Relocation Payment or Relocation Advisory Assistance due to their occupancy of the Premises.

31. Notwithstanding anything herein contained to the contrary, this Lease may be terminated and the provisions of the Lease may be altered, changed, or amended by mutual consent of the parties hereto.

32. LESSEE, its employees, contractors, vendors, and invitees shall individually comply with regulations adopted by the STATE when using the Premises. Said regulations prohibit but are not limited to, the possession or use of firearms, liquor, or illegal drugs while on STATE’s Premises. Any willful violation of said regulations contained in this Section will be grounds for immediate termination of this Lease and eviction of the LESSEE.

33. In the event of the failure, neglect, or refusal of LESSEE to do or perform work, or any part thereof, or any act or thing in this lease provided to be done and performed by LESSEE, STATE shall, at its option, have the right to do and perform the same, and LESSEE hereby covenants and agrees to pay STATE the cost thereof on demand.

34. Upon termination of this lease for any cause, the LESSEE shall remove any and all equipment and improvements of the LESSEE and restore the entire Premises to its condition prior to the execution of this lease, except however, the STATE may approve, in writing, any deviation from this requirement.

35. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
36. The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

37. LESSEE agree not to interfere, in any way, with the interests of any person or persons that may presently, or in the future, hold in oil, gas, or other mineral interests upon or under said Premises; nor shall LESSEE, in any way, interfere with the rights of ingress and egress of said interest holders.

38. Time is of the essence for each and all of the provisions, covenants and conditions of this agreement.
This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any prior lease or negotiations. There have been no representations by the STATE or understandings made between the STATE or LESSEE other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto as of the date listed below.

STATE OF CALIFORNIA:

APPROVED:
DIRECTOR OF DEPARTMENT OF GENERAL SERVICES

By: __________________________________________
   JOANN BLANDFORD, Manager
   State Owned Leasing and Development
   707 Third Street, 5th Floor
   West Sacramento, California 95605

Date Executed: ________________________________

APPROVAL RECOMMENDED:
DEPARTMENT OF GENERAL SERVICES

By: __________________________________________
   PAT LIVA
   Associate Real Estate Officer
   State Owned Leasing and Development
   707 Third Street, 5th Floor
   West Sacramento, CA 95605

Date: ________________________________

CONSENT:
DEPARTMENT OF GENERAL SERVICES
OFFICE OF FLEET ADMINISTRATION

By: __________________________________________
   DEBRA BOULER, Office Chief
   Office of Fleet Administration
   800 Q Street
   Sacramento, California 95814

Date: ________________________________________

LESSEE:

CITY OF STOCKTON

By: __________________________________________
   MARK LEWIS, ESQ., City Manager
   425 North El Dorado Street
   Stockton, California 95202

Date: ________________________________

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: __________________________________________
   DEPUTY CITY ATTORNEY

Date: ________________________________

M/Sold/Jobs/DGS:L2-164