

RESOLUTION NO. 2008-222

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
LEASE AGREEMENT FOR TEMPORARY LIBRARY
FACILITIES AT 212 WEST PINE STREET

WHEREAS, staff has negotiated the attached lease between the Beckman Capitol Corporation and the City for the temporary relocation of the Lodi Public Library to the Beckman Building located at 212 West Pine Street, while the Library is under construction; and

WHEREAS, the lease provides for a four-month term beginning December 1, 2008, with rent payments in the amount of \$4,970 per month due on the fifth day of each month in advance; and

WHEREAS, rent payments will be derived from Library private trust funds.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Lease Agreement between Beckman Capitol Corporation and the City of Lodi for the temporary relocation of the Lodi Library at 212 West Pine Street during construction.

Dated: November 19, 2008

I hereby certify that Resolution No. 2008-222 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 19, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian, and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

LEASE AGREEMENT
Beckman Building
212 W. Pine Street
Lodi, California

THIS LEASE entered into as of this ____ day of _____, 2008, by BECKMAN CAPITOL CORPORATION ("Landlord") and THE CITY OF LODI, ("Tenant").

BACKGROUND

A. Landlord is the fee simple owner of the Beckman Building in the City of Lodi, San Joaquin County, State of California. The street addresses of the Beckman Building are 211 West Oak Street and 212 West Pine Street, Lodi ("Owned Premises").

B. Tenant desires to lease space on the Owned Premises for the temporary operation of a portion of its library programs, and parking.

C. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

AGREEMENT

In consideration of their mutual covenants, the Parties agree as follows:

1. Rent. Tenant shall pay \$4,970 per month as rent for the Owned Premises. Rent shall be paid on the 5th day of each month, in advance.

2. Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord the Owned Premises for the exclusive operation of the Lodi Public Library's programs.

3. Term. The term of this Lease shall be from December 1, 2008 ("Commencement Date") through to March 31, 2009, unless otherwise terminated as provided in this Lease. Tenant shall have the right to extend this Lease for four (4) one-month increments on thirty (30) days written notice to Landlord on the same terms as set forth herein.

4. Maintenance.

a. Except as provided below, Landlord shall, at its own expense, maintain the Owned Premises and any buildings and or equipment on or attached to the Premises in a safe condition, in good repair and in a manner suitable to Tenant so as not to conflict with the intended use by Tenant.

b. Tenant shall have sole responsibility for the janitorial maintenance and the maintenance, repair, and security of its equipment and personal property, and shall keep the same in good repair and condition during the Lease Term. Tenant shall pick up and place in appropriate receptacles all litter produced by its operations.

c. Tenant shall be responsible for removal of the following fixtures currently on site, prior to the commencement of its rental obligations:

1. Existing front counter and gate, including all electrical outlets, voice & data cabling, and intercom/radio system. The intercom/radio built in to the counter will be left, unattached, for the Landlord.

2. Four bolts and the empty electrical conduit protruding from floor in southwest (old computer) room.

3. Voice/data and/or electrical floor boxes, if determined to be in conflict with the furniture arrangement. Existing voice/data wiring that is excessively long will be shortened and new voice and data cabling will be added to reconnect the building to the City network. All new cabling may be removed by tenant at its option at the end of the lease period.

4. Tenant will also install, and remove upon lease termination, shelving on the premises. Tenant shall patch any holes and return the walls to their condition upon commencement of the lease.

d. Tenant shall have access to the Premises starting Tuesday November 11, 2008 to perform the above listed improvements and shall indemnify, defend and hold tenant harmless for any physical injuries arising out of or related to the improvements.

Tenant may remove and dispose of the above fixtures with no obligation to replace them or otherwise compensate Landlord for the removal.

5. Utilities. Tenant shall provide utility service to the Owned Premises at its sole cost and expense.

6. License Fees. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Premises.

7. Approvals; Compliance with Laws. Tenant's use of the Premises is contingent upon its obtaining all certificates, permits, zoning and other approvals that may be required by any federal, state or local authority. Tenant shall maintain and operate its Program in accordance with applicable site standards, statutes, ordinances, rules and regulations now in effect or that may be issued thereafter by any governing bodies.

8. Default and Remedies. It shall be a default if Tenant defaults in the performance of any covenant or condition of this Lease and does not cure such other default within thirty (30) days after receipt of written notice from Landlord specifying the default complained of, provided, however, that if the nature of such default is such that the same cannot reasonably be cured within thirty (30) days, the defaulting party shall not be deemed to be in default if such party shall within such period commence the cure of the default and thereafter diligently prosecute the same to completion within ninety (90) days; or if Tenant abandons or vacates the Premises, or if Tenant is adjudicated as

bankrupt or makes any assignment for the benefit of creditors; or if Tenant becomes insolvent.

Subject to applicable law, in the event of a material default, which is not cured during the applicable cure period, Landlord shall have the right, as its sole and only remedy, with notice to re-enter the Premises and eject all persons therefrom, and declare this Lease at an end and recover from Tenant a sum of money equal to the total of the amount of the unpaid rent accrued through the date of termination and no more.

In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Indemnity and Insurance.

a. Disclaimer of Liability: Except to the extent caused by the negligence or intentional misconduct of Landlord or of any agent, servant or employee of Landlord, Landlord shall not at any time be liable for injury or damage occurring to any person or property from any other cause whatsoever arising out of Tenant's use or operation of the Premises.

b. Indemnification by Tenant: Except to the extent caused by the negligence or intentional misconduct of Landlord or of any agent, servant or employee of Landlord, Tenant ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

- i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the program or Tenant's failure to comply with any applicable federal, state or local statute, ordinance or regulation governing Tenant's use of the Premises.

c. Indemnification by Landlord: Except to the extent caused by the negligence or intentional misconduct of Tenant or of any agent, servant or employee of Tenant, Landlord ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless Tenant and all associated, affiliated, allied and subsidiary entities of Tenant, now existing or hereinafter created, and their respective officers, boards, commissions,

employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

- i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Landlord, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

d. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

e. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions-or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

f. Insurance: During the term of the Lease, City shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each accident.
- ii. Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.
- iii. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.
- iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. Named Insureds: All policies, except for workers compensation policies, shall name Landlord and all of their associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. Evidence of Insurance: Certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with the additionally insured party annually during the term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord. Landlord shall immediately advise Tenant of any claim or litigation that may result in liability to Tenant.

i. Cancellation of Policies of Insurance: All insurance policies maintained pursuant to this Lease shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to [Landlord/Tenant] by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Lease."

j. Self-Insurance: The insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

10. Notices. Except as otherwise provided for in this Lease to the contrary, all notices, demands and other communications required or contemplated to be given under this Lease shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

Notice(s) required to be given to Tenant shall be addressed as follows:

City of Lodi Public Library
P. O. Box 3006
221 W. Pine Street
Lodi, CA 94240
Attn: Nancy Martinez
Telephone: (209)333-5534

Notice(s) required to be given to Landlord shall be addressed as follows:

Beckman Capitol Corporation
c/o Randy Snider
1300 West Lodi Avenue Suite A-11
Lodi, California 95242
Telephone: (209)333-0900

11. Assignment. Tenant may not assign this Lease or sublet the Premises without the prior written consent of Landlord.

12. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

13. Non-Waiver. Failure of Landlord or Tenant to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but Landlord or Tenant shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

14. Miscellaneous.

a. Landlord and Tenant represent that each, respectively, has full right, power, and authority to execute this Lease.

b. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

c. This Lease shall be construed in accordance with the laws of the State of California.

d. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

This Lease was executed as of the date first set forth above and effective as of the date set forth in paragraph 3 above.

TENANT:

LANDLORD:

CITY OF LODI

BECKMAN CAPITOL CORPORATION

BLAIR KING
City Manager

Approved as to Form

D. STEPHEN SCHWABAUER
City Attorney