



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Consider a resolution authorizing the City Manager to execute an Economic Incentive Agreement with California Correctional Health Care Services for a total not-to-exceed amount of \$81,066.88

MEETING DATE: January 27, 2016

PREPARED BY: Rachael Brown, Economic Development Coordinator

DEPARTMENT HEAD: Darrell Doan, Economic Development Director

RECOMMENDED ACTION:

Staff recommends the City Council adopt a Resolution authorizing the City Manager to execute an Economic Incentive Agreement with California Correctional Health Care Services (CCHCS) for a total not-to-exceed amount of \$81,066.88.

BACKGROUND INFORMATION:

On December 9, 2009, the Elk Grove City Council adopted Resolution No. 2009-264, creating the Economic Development State Office Building Incentive Program. On June 23, 2010, pursuant to Resolution No. 2010-122, the City Council amended the State Office Building Incentive Program to include federal office buildings. These programs were developed as an economic development tool designed to attract State and Federal agencies to Elk Grove for economic development purposes, including the attraction of new capital investment, job creation, and tax base expansion to and within the City.

On September 14, 2011, the City Council adopted Resolution No. 2011-170, authorizing an economic incentive payment under the State and Federal Office Building Incentive Program to CCHCS in the amount of

\$1,900,000 to attract CCHCS to Elk Grove, and to induce the creation of approximately 1,500 State office jobs in the City. As a result of the incentive, in May 2012 CCHCS executed a 20-year lease for 265,000 square feet of office space with Sacramento-based developer Pappas Investments and consolidated its operations and headquarters in Elk Grove. Incentive funds were used to pay for relocation and other costs.

Resolution No. 2011-170 further authorized an economic incentive payment under the State and Federal Office Building Incentive Program to Pappas Investments, developer of the office space to be occupied by CCHCS, in the amount of \$1,400,000 to pay for development costs, bringing the total incentive amount for CCHCS's 2012 relocation to Elk Grove to \$3,300,000.

Currently, CCHCS occupies approximately 271,235 square feet of newly constructed and rehabilitated office space in five Buildings (C, D, E, F, and G) at 8260 and 8280 Longleaf Drive, and 9260 and 9272 Laguna Springs Drive, commonly known as Laguna Springs Corporate Center. The 6,235 square foot Building F was only recently leased and is currently being renovated for occupancy. Over the years since the original incentive was granted, CCHCS has steadily staffed its campus, and today has approximately 1,500 budgeted full-time State office positions.

ANALYSIS:

Due to recent changes in the provision of inmate mental and physical healthcare services at the State and Federal levels requiring additional inmate care, CCHCS has determined that more corporate administrative (i.e., non-prison) staff are now needed in Elk Grove, creating a space shortage at the campus. As a result, CCHCS has executed a lease with Pappas Investments for 45,825 square feet of additional space at Laguna Springs Corporate Center in a new building currently under construction at 8220 Longleaf Drive (Building B). Building B is a four-story, 110,372 square foot, \$11 million Class-A office building of which just under 50% will be occupied by CCHCS. The leasing and construction of the new Building B and renovation of Building F, combined with existing space, will allow CCHCS to reconfigure its office buildings to accommodate a total of up to approximately 1,630 employees.

CCHCS plans to increase its total employees to approximately 1,564 by spring of 2017; as a result, CCHCS is requesting an additional incentive payment of not-to-exceed \$81,066.88. The incentive payment under the proposed agreement will be calculated based on the number of confirmed new full-time jobs CCHCS creates, but shall not exceed \$81,066.88. This amount is derived from the incentive per employee value of the 2011 incentive payment to CCHCS applied to a projected 64 new hires above the original 1,500 employees ($\$1,900,000$ original incentive, divided by 1,500 original employees equals $\$1,266.67$ incentive per employee; $\$1,266.67$ times 64 additional employees equals $\$81,066.88$).

Upon completion of Building B, CCHCS will occupy approximately 317,060 square feet of existing and new office space in Elk Grove, and Pappas Investments and CCHCS will have invested approximately \$53 million in total development costs in the City. In addition to permanent employment, the total project has generated approximately 400 full-time-equivalent construction jobs. At completion of the expansion, the City's total investment in CCHCS's relocation to Elk Grove will be up to \$3,381,066; meaning, that for every one dollar the City has invested, the developer and tenant have invested \$16.

The developer anticipates that the Building B shell will be completed by September 2016. Following the construction of tenant improvements by CCHCS, the anticipated move-in date is March 2017.

On August 12, 2015, the City Council's State Office Incentive Subcommittee met with Staff to review and discuss CCHCS's incentive request. At that time, the Subcommittee approved the incentive request and directed staff to seek full City Council approval.

Staff is recommending that the City provide an additional and separate incentive payment under the State and Federal Office Building Incentive Program to CCHCS in an amount not-to-exceed \$81,066.88 to induce the creation of an additional 64 State office jobs in Elk Grove. No incentive is being requested by or provided to Pappas Investments. No payment would be made under the new Incentive Agreement unless and until CCHCS certifies and staff verifies that, (a) the original 1,500 jobs are in place at the time of request for payment, and (b) the additional up to 64 new jobs, corresponding to the incentive amount requested, are in place and Building B is complete and occupied.

FISCAL IMPACT:

If the recommended actions are approved, the City would provide an incentive payment to California Correctional Health Care Services in an amount not to exceed \$81,066.88 from the City's Economic Development Incentive Fund.

ATTACHMENTS:

1. Resolution
2. Agreement

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE AN ECONOMIC INCENTIVE
AGREEMENT WITH CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES IN
AN AMOUNT NOT TO EXCEED \$81,066.88**

WHEREAS, the City Council created the State and Federal Office Building Incentive Program to encourage State and Federal agencies to locate in Elk Grove to attract new capital investment in the City, create new jobs, and expand the City's tax base; and

WHEREAS, economic development efforts are critical for the City of Elk Grove to ensure a vibrant, healthy, and diverse local economy; and

WHEREAS, California Correctional Health Care Services currently employs approximately 1,500 people in the City of Elk Grove; and

WHEREAS, California Correctional Health Care Services plans to expand in its current location in Elk Grove and add approximately 64 additional jobs; and

WHEREAS, the City's State and Federal Office Building Incentive Program was a significant factor in the selection of a preferred location for expansion.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute an Economic Incentive Agreement with California Correctional Health Care Services in an amount not to exceed \$81,066.88.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 27th day of January 2016.

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY



CITY OF ELK GROVE

ECONOMIC INCENTIVE AGREEMENT

California Correctional Health Care Services

This Economic Incentive Agreement (“Agreement”) is entered into as of this ____ day of _____, 2016, by and between the City of Elk Grove, a municipal corporation (“City”) on the one hand, and the California Correctional Health Care Services (“CCHCS”), a department of the State of California on the other (collectively, “Parties”), with reference to the following facts:

RECITALS

A. WHEREAS, pursuant to Elk Grove City Resolution Nos. 2009-264 and 2010-122, the City has approved a State and Federal Office Building Incentive Program (“Program”); and

B. WHEREAS, under the Program, the City may provide economic incentives for the development or leasing of state or federal buildings in the City, all as specified in the Program; and

C. WHEREAS, on September 14, 2011 the City Council approved Resolution 2011-170, authorizing an economic incentive payment to CCHCS in the amount of \$1,900,000 as memorialized in that certain Economic Incentive Agreement dated January 25, 2012 between the Parties, which resulted in CCHCS consolidating its operations in and relocating to Elk Grove in approximately 271,235 existing square feet of office space and resulted in the creation of approximately 1,500 jobs within the City; and

D. WHEREAS, on January 27, 2016, the City Council approved Resolution 2016-____, authorizing an additional economic incentive payment to CCHCS in an amount not to exceed \$81,066.88 and authorizing the City Manager to enter into this Agreement with CCHCS; and

E. WHEREAS, on July 16, 2015, Laguna Springs Corporate Center Phase II, LLC (“Lessor”) entered into a lease with the California Department of Corrections, by and through the Federal Receiver, J. Clark Kelso, on behalf of the tenant agency, CCHCS, for approximately 45,825 net usable square feet of office space located at 8220 Longleaf Drive, Elk Grove, California (“Site”); and

F. WHEREAS, CCHCS now intends to occupy the Site, which will enable CCHCS to reconfigure its office space to accommodate up to approximately 1,630 employees within the City, of which up to approximately 1,564 jobs are expected to be filled at Site occupancy ; and

G. WHEREAS, to promote economic development within the City, attract new capital investment, provide new permanent jobs, and establish new tax-generating uses, the City has approved this Agreement with CCHCS on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions, and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The above-referenced Recitals are true and correct and incorporated herein by reference.

2. Incentive Payments. Subject to the provisions and limitations set forth herein, the City agrees to provide an economic incentive payment ("Incentive Payment") to CCHCS in an amount not to exceed Eighty-One Thousand Sixty-Six Dollars and Eighty-Eight Cents (\$81,066.88) ("Incentive Amount") to be distributed as set forth in paragraphs 4 and 5 below.

3. Project Location/Description. The Incentive Payment provided for herein shall be used in conjunction with the occupancy of the Site.

4. Manner of Remittance. Subject to the schedule set forth in paragraph 5 below, the City agrees to pay the Incentive Amount to CCHCS upon submittal of a payment request on the form attached hereto as Attachment A. The Parties expressly acknowledge that this Agreement does not create a debt of the City to CCHCS, but rather an obligation to pay the Incentive Amount only upon the satisfaction of the conditions of this Agreement.

5. Timing of Payments. The Incentive Payment shall be \$1,266.67 per new full time equivalent State office job, and shall not to exceed \$81,066.88. The Incentive Amount shall only be made upon confirmation by the City that CCHCS has occupied the Site, has fulfilled its original employment obligation of 1,500 employees, and has established up to 64 new full time equivalent State office jobs, and upon receipt of a payment request from CCHCS (Attachment A). Upon receipt, the payment request shall be reviewed by City staff and City staff will make best efforts to ensure that payments will be made within thirty (30) days of the City's receipt of a request for payment, subject to the conditions and limitations of this Agreement. In no event shall payment exceed the total amount payable as identified in this paragraph 5.

6. Term and Expiration of Agreement. This Agreement shall expire by its own terms on the earlier of ninety (90) days after the date of the final payment by the City as provided for herein, or forty-eight (48) months from this Agreement's effective date, whichever occurs first. Notwithstanding the expiration of this Agreement, paragraphs 7, 8, and 9 below shall survive and remain in full force and effect following the expiration of this Agreement.

7. Prevailing Wage. CCHCS is fully aware of the provisions of Labor Code sections 1720, et seq. regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issue. CCHCS's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. CCHCS agrees to comply with all applicable laws concerning the development of its project. Neither the City nor any of its employees, agents, or representatives have rendered opinions to CCHCS respecting the applicability of Labor Code sections 1720, et seq. to CCHCS's construction project, and CCHCS has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code sections 1720, et seq. (including Section 1781) is brought or made against the City in connection with this Agreement or any related construction project, CCHCS shall be obligated to defend, indemnify, and hold harmless the City with respect to such claim in accordance with paragraph 8 below.

8. Indemnity Obligation. CCHCS agrees to protect, defend (with legal counsel acceptable to the City), indemnify, and hold harmless the City, its Council members, officers, agents, independent contractors, and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries, and liabilities of every kind arising out of the execution and performance of this Agreement including, but not limited to, whether the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including, but not limited to, the City's authority to pay the Incentive Amount. This section shall apply regardless of whether or not the claim, damage, penalty, loss, cost, expense, injury, and/or liability complained of arises out of or relates in any way to any negligence on the part of the City. The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury, or liability sustained by CCHCS and/or its contractors, subcontractors, agents, and/or employees. In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to CCHCS and/or to its contractors, subcontractors, agents, and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate, independent counsel, at CCHCS's and/or its contractors, subcontractors, agents, and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including, but not limited to, the settlement of any such claim.

9. Authority to Execute Agreement. Each individual signing this Agreement represents and warrants that he or she has full authority to execute the same on behalf of the Party on whose behalf he or she so signs, and that he or she is acting within the scope of his or her authority. Each individual signing this Agreement agrees to indemnify and hold harmless the other Party for loss, damage, liability, cost, or expense (including reasonable attorneys' fees) arising out of any claims made by anyone that such authority to sign this Agreement does not exist.

10. Advice of Counsel. Each of the Parties hereto has received the advice of independent legal counsel prior to signing this Agreement. Each of the Parties hereto

acknowledges that no other party, or agent or attorney of any other party, has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement.

11. Entire Agreement. It is expressly understood and agreed that this Agreement contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. It is expressly understood and agreed that there have been no promises, agreements, warranties, or inducements, not herein expressed. The Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

12. Governing Law. All questions with respect to the enforcement, interpretation, or construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California. Should any judicial proceeding be brought relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction located in Sacramento County.

13. Joint Drafting. Each party is represented by legal counsel and has consulted with legal counsel regarding the terms of this Agreement and fully understands each term contained herein. Each party knowingly and voluntarily enters into this Agreement and knowingly and voluntarily agrees to each term contained herein. All of the undersigned Parties agree that they and their legal counsel have reviewed and have had an opportunity to revise this Agreement, that no single party shall be deemed to have drafted this Agreement or any portion thereof, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.

14. Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments, including, but not limited to, escrow instructions, and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

15. Amendment/Modification. This Agreement shall not be amended except by a written instrument signed by all Parties or their respective successors and assigns.

16. Waiver/Estoppel. No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any proceeding, concurrent or succeeding breach of the same, or any other term or provision thereof. No waiver shall be binding unless in writing and signed by all Parties to this Agreement. Delay or failure of any party to enforce any right provided by this Agreement shall not constitute a waiver or estoppel of said right. Any waiver by any party of any term or provision of this Agreement shall not be deemed a waiver of any other term or provision of this Agreement.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

18. Severability. If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not

be affected thereby and shall continue to be in full force and effect and be binding on the Parties hereto.

19. Captions. Sections, titles, and captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit or extend the scope of this Agreement or the intent of any of its provisions.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. Such executed counterparts may be delivered by facsimile or email which, upon transmission to the other parties, shall have the same force and effect as delivery of the original signed counterpart.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

City:

City of Elk Grove, a municipal corporation

Applicant:

State of California
California Correctional Health Care Services
California Department of Corrections and Rehabilitation

By: _____
Laura S. Gill
City Manager

By:  _____
J. Clark Kelso
Federal Receiver

Approved as to Form:

By:  _____
Jonathan P. Hobbs
City Attorney

Attest:

By: _____
Jason Lindgren, City Clerk

Attachment A



Phone: 916.683.7111
Fax: 916.691.3168

Web: www.elkgrovecity.org

8401 Laguna Palms Way
Elk Grove, California 95758

City of Elk Grove Economic Development Incentive Payment Request

Date: _____
Agency Name: _____
Contact Person: _____
Contact Phone number: _____
Payment Request Amount: _____

Approved Incentive Detail

Sq. Ft. Occupied:	45,825
Maximum Amount Awarded:	\$81,006.88

I hereby request payment for the Economic Incentive amount awarded by the City Council of the City of Elk Grove. By signing below, I acknowledge that this request is eligible under the terms of the incentive awarded by the City, and hereby certify that the corporation identified in the Economic Incentive Agreement has occupied and is occupying the space identified in the Agreement and has created the number of full time equivalent state office jobs upon which this request is based.

, Authorized Signatory

DELEGATION OF AUTHORITY

I, J. CLARK KELSO, Receiver, hereby delegate to RICHARD KIRKLAND, Chief Deputy Receiver, the authority to execute all contracts, agreements, instruments and other documents related to leases or leasing within the scope of the Receiver's power and authority, which includes the Receiver's power and authority to lease property as necessary to carry out his duties under the Order Appointing Receiver dated February 14, 2006, United States District Court for the Northern District of California, Case No. C01-1351 TEH, *Plata v. Brown*, at page 4, lines 5-7 ("The Receiver shall exercise all powers vested by law in the Secretary of the CDCR as they relate to the administration, control, management, operation, and financing of the California prison medical health care system") and the Order Approving Space Coordination Agreement, dated October 7, 2008, which defines space planning as "the leasing and management of physical office space including but not limited to, space design, tenant improvements, and procurement of furniture (both conventional and modular), required office equipment, and the voice and data structure to operate an office."



I reserve the right to delegate to additional persons the authority described above, and delegation of the above authority to additional persons will not terminate this delegation.

This delegation of authority shall remain in effect until terminated in writing, until Mr. Kirkland's removal from office, or until cessation of the Receivership, whichever shall first occur.

June 2, 2015

J. CLARK KELSO, Receiver

Date