



MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2019-216

MEETING: April 23, 2019
TO: The Board of Supervisors
FROM: Steve Dahlem, County Counsel
RE: Mariposa Preschool Cooperative Lease Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve a Lease Agreement with Mariposa Preschool Cooperative, a California Non-Profit Corporation, for use of the Woodland Community Building for Fiscal Year 2019/2020; and authorize the Board of Supervisors Chair to sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has authorized the Mariposa Preschool Cooperative to lease the Woodland Community Building for several years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

FINANCIAL IMPACT:

Funding received from the rent of the Woodland Community Building is budgeted in the Facility Maintenance budget.

ATTACHMENTS:

Mariposa Preschool Coop Lease Agt (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Merlin Jones, District II Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of April 23, 2019, by and between the County of Mariposa, hereinafter called **LESSOR**, and Mariposa Preschool Cooperative, hereinafter called **LESSEE**.

WITNESSETH

WHEREAS, the **LESSOR** owns real property located in the County of Mariposa commonly known as Woodland Community Hall; and

WHEREAS, the parties wish to provide for the leasing of said property by the **LESSOR** to the **LESSEE**;

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS AGREED AS FOLLOWS:

1. **PREMISES**: The leased **PREMISES** is the real property located at 3415 Woodland Drive, in the County of Mariposa, commonly known as Woodland Community Hall.
2. **CONSIDERATION/TERM**: For and in consideration of Two Hundred Fifteen Dollars (\$215.00) per month, which includes routine water testing, **LESSOR** agrees to lease the real property described above for the 2019-2020 school year, which commences in August 2019 and concludes in June 2020. This Lease is renewable thereafter as mutually agreed by the **LESSOR** and **LESSEE**.
3. **USE**: The **PREMISES** which are the subject of this Lease shall be used as a preschool. **LESSEE** hereby warrants that it is a legally licensed school daycare center operation, licensed by the State of California.

4. **COMPLIANCE WITH LAW:** As required by California Civil Code section 1938, Lessor represents that premises have not undergone inspection by a Certified Access Specialist (CASp).

5. **ASSIGNMENT:** Except as expressly provided herein, **LESSEE** shall not assign this Lease nor any right hereunder, nor sublet the **PREMISES**, nor any part thereof, or suffer any other person to occupy the said **PREMISES** or any portion thereof without prior written consent of the **LESSOR**, which consent shall not be unreasonably withheld. Any such assignment, subletting or occupation by any other person without such consent shall be void, and shall at the option of **LESSOR** terminate this Lease. This provision does not prohibit the **LESSEE** from renting or allowing other parties to utilize the **PREMISES** for permitted functions and events.

6. **IMPROVEMENTS, CONSTRUCTION, ALTERATION, REMOVAL:** **LESSEE** may maintain on the **PREMISES** improvements as necessary to facilitate the use of the **PREMISES**. Any such structure and/or alteration shall remain the sole and separate property of **LESSEE** and at the termination of this Lease shall be removed at the **LESSEE'S** expense within a reasonable time or disposed of as otherwise mutually agreed by **LESSEE** and **LESSOR**.

7. **MAINTENANCE AND REPAIR:** **LESSEE** will be responsible for all maintenance and repairs of **LESSEE** installed interior improvements. **LESSEE** agrees to maintain the **PREMISES** in a clean and orderly condition at all times, and in accordance with safety and fire codes and other applicable federal and state laws and ordinances of the County of Mariposa. **LESSOR** shall notify the **LESSEE** in writing of any necessary maintenance or repair of any structure placed on the leased **PREMISES** by **LESSEE**. **LESSOR** shall maintain and repair all structures and utilities, including but not limited to heat, air conditioning, water, and sewer. Failure to repair and maintain the **PREMISES** shall be a breach of this Lease and **LESSEE** may at its option terminate this Lease.

8. **RIGHT OF RE-ENTRY OF LESSOR:** It is expressly agreed that in the event **LESSEE** creates or causes any breach of this Lease, **LESSOR** shall have the right and option to re-

enter said **PREMISES**, take possession thereof, and remove all persons as provided by law.

9. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, **LESSEE** promises and agrees to deliver unto **LESSOR** the Leased **PREMISES** in as good condition as at the date of execution of this Agreement, reasonable wear and tear excepted.

10. **POSSESSORY INTEREST:** **LESSEE** recognizes and understands that to the extent this Lease may or may not create a possessory interest subject to property taxation that the **LESSEE** is solely responsible for the payment of any taxes levied or assessed on the Leased **PREMISES**. **LESSOR** expresses no opinion on the taxable affect of this Lease.

11. **INSURANCE:** **LESSEE** will provide insurance coverage as of the commencement of this Lease and during any right of occupancy of the leased **PREMISES** and shall maintain coverage in full force and in effect until the termination of this Lease Agreement as follows:

A. **Minimum Scope And Limit Of Insurance**

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. (for lessees with employees).

(3) Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If **LESSEE** maintains broader coverage and/or higher limits than the minimums shown above, **COUNTY** requires and shall be entitled to the broader coverage and/or higher limits

maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to **COUNTY**.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) Additional Insured Status: **COUNTY**, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of **LESSEE** including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the **LESSEE**'s insurance at (least as broad as ISO Form CG 20 10.

(2) Primary Coverage: For any claims related to this contract, the **LESSEE**'s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the **COUNTY**, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the **COUNTY**, its officers, officials, employees, or volunteers shall be excess of the **LESSEE**'s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to **COUNTY**.

(4) Waiver of Subrogation: **LESSEE** hereby grants to **COUNTY** a waiver of **COUNTY** by virtue of the payment of any loss under such insurance. **LESSEE** agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not **COUNTY** has received a waiver of subrogation endorsement from the insurer.

(5) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to **COUNTY**.

(6) Self-Insured Retentions: Self-insured retentions must be declared to and approved by **COUNTY**. At the option of **COUNTY**, either: **LESSEE** shall obtain coverage to reduce or eliminate such self-insured retentions as respects **COUNTY**, its officers, officials, employees, and volunteers; or **LESSEE** shall provide a financial guarantee satisfactory to **COUNTY** guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or **COUNTY**.

(7) Verification of Coverage: **LESSEE** shall furnish **COUNTY** with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by **COUNTY** before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the **LESSEE's** obligation to provide them. **COUNTY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(8) Waiver of Subrogation: **LESSEE** hereby grants to **COUNTY** a waiver of any right to subrogation which any insurer of said **LESSEE** may acquire against **COUNTY** by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not **COUNTY** has received a waiver of subrogation endorsement from the insurer.

(9) Special Risks or Circumstances: **COUNTY** reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

12. **INDEMNITY**: **LESSEE** agrees to indemnify, protect, defend and hold **LESSOR** and its officers, agents and employees, free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs of any kind, including but not limited to, all costs of defense thereof, caused by or arising out of **LESSEE'S** use or the use of any guests, invitees or agents of **LESSEE** of the leased **PREMISES**. Upon demand **LESSEE** shall, at its own expense, defend **LESSOR**, and its officers, agents and employees, against any and all such liabilities, claims, demands, actions, losses, damages, and costs of any type or nature arising from the sole negligence of **LESSEE**. **LESSOR** shall indemnify, protect, defend, and hold **LESSEE** and its officers, agents, and employees free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs of any kind, including but not limited to, all costs of defense thereof, caused by or arising out of, or in any way related to **LESSOR'S** obligations to maintain and repair the **PREMISES**, or any negligence of **LESSOR**, or any structural or other defects of the **PREMISES**.

13. **CHANGE OF ADDRESS**: It shall be **LESSOR'S** responsibility to inform **LESSEE** of any change of address.

14. **INSPECTION**: **LESSOR** shall be permitted to enter and view the **PREMISES** at any reasonable time for the purpose of inspecting or maintaining such **PREMISES** and doing any

and all things with reference thereto which the **LESSOR** is obligated to do.

15. **TERMINATION PRIOR TO EXPIRATION:**

A. The **LESSOR** shall have the right to terminate this Lease, on the occurrence of any of the following events:

(i) The failure of the **LESSEE** to perform or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease.

(ii) The abandonment of the leased **PREMISES**. Should this occur **LESSOR** shall not be responsible for the custodial protection of **LESSEE'S** abandoned property, fixtures or equipment.

B. **LESSEE** shall have the right to terminate this Lease upon sixty (60) days written notice.

C. It is mutually agreed that if **LESSEE**, during any fiscal year covered by this Agreement fails to appropriate sufficient funds to continue this Agreement, this Agreement shall be of no further force and effect. California State Constitution Article XVI section 18.

16. **BREACH:** In the event of breach of this Lease by **LESSEE**, **LESSOR** shall be entitled to all rights and remedies provided by law in addition to the specific remedies mentioned herein.

17. **PARTNERSHIP DISCLAIMER:** It is mutually understood and agreed that nothing in this Lease is intended to or shall be construed as in any way creating or establishing the relationship of partners between the parties hereto, or as constituting the **LESSEE** as an agent or representative of the **LESSOR** for any purpose or in any manner whatsoever.

18. **NOTICES:** Any notice to the **LESSEE** shall be sufficient if sent by certified mail, postage prepaid, addressed to **LESSEE** at 3415 Woodland Drive, Mariposa, CA 95338. Any notice to the **LESSOR** shall be sufficient if sent by certified mail, postage prepaid, addressed to the County Administrative Officer, County of Mariposa, P.O. Box 784, Mariposa, CA 95338.

19. **NON-WAIVER:** Any waiver of breach of any covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be

deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

20. **SUCCESSOR:** This Lease shall be binding upon and inure to the benefit of all the heirs, successors and assigns of the parties.


IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

LESSOR:

LESSEE:



MILES MINETREY, Chair
Mariposa County Board of Supervisors



Karra Zamora
, President

ATTEST:

APPROVED AS TO FORM:



RENE LAROCHE
Clerk of the Board



STEVEN W. DAHLEM
County Counsel