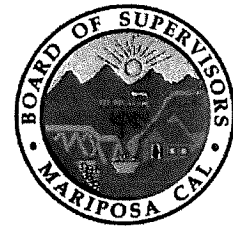




MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2016-271

MEETING: June 14, 2016

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Kiwanis Preschool Lease Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve a Lease Agreement with Kiwanis Preschool Academy for Use of the Darrah Schoolhouse for Fiscal Year 2016-2017; and Authorize the Board of Supervisors Chair to Sign the Lease Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board has authorized the Kiwanis Preschool Academy to lease the Darrah Schoolhouse for a number of years.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not lease the Darrah Schoolhouse and the Kiwanis Preschool Academy will have to find another venue.

FINANCIAL IMPACT:

Money received for the rental of this facility is budgeted in the Facilities Maintenance Budget and will be included in the Fiscal Year 2016-17 Budget.

ATTACHMENTS:

Kiwanis Preschool 2016 Lease (DOC)

CAO RECOMMENDATION

Requested Action Recommended



Mary Hodson, CAO 6/7/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Kevin Cann, District IV Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Rosemarie Smallcombe, Marshall Long, Kevin Cann, John Carrier

EXCUSED: Merlin Jones

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of May 20, 2016, by and between the County of Mariposa, hereinafter called **LESSOR**, and Kiwanis Preschool Academy, hereinafter called **LESSEE**.

WITNESSETH

WHEREAS, the **LESSOR** owns real property located in the County of Mariposa commonly known as Darrah Schoolhouse ; 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 5991 Darrah Road, in the County of Mariposa commonly known as Darrah Schoolhouse.

2. **CONSIDERATION/TERM**: For and in consideration of Two Hundred Fifty-Six Dollars (\$256.00) per month, **LESSOR** agrees to lease the real property described above for the 2016-2017 school year, which shall commence in August 2016 and conclude in May 2017. 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.

This Agreement shall permit **LESSEE** the full use of the **PREMISES**, Monday through Friday of each week during the term hereof, from 7:30 a.m. to 6 p.m. Days of operation will be within the Public School Calendar with all holidays, vacations, and the annual Wagon Train event observed.

4. **REGULATIONS:** The use of the leased **PREMISES** by **LESSEE** shall at all times be subject to all federal and state laws and ordinances of the County of Mariposa. **LESSOR** warrants that the **PREMISES** is at the time of this Lease in compliance with all laws and ordinances.

5. **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).

6. **VOLUNTARY 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.

7. **INVOLUNTARY ASSIGNMENT:** **LESSEE** agrees that, except as expressly provided herein, neither this Lease or any interest herein shall be assignable or transferable unless otherwise agreed in writing by the parties hereto, which consent shall not be unreasonably withheld. **LESSEE** may use the **PREMISES** for other similar County activities if the use in paragraph 3 is no longer needed.

8. **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**.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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**.

14. **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. **General Liability and Bodily Insurance:** LESSEE shall obtain and keep in full force and effect general liability coverage of at least One Million Dollars (\$1,000,000) combined limit for bodily injury and property damage.

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

16. **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.

17. **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.

18. **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.

19. **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.

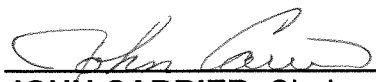
20. **NOTICES:** Any notice to the **LESSEE** shall be sufficient if sent by certified mail, postage prepaid, addressed to **LESSEE** at P.O. Box 1685, Mariposa, CA 95338. Any notice to the **LESSOR** shall be sufficient if sent by certified mail, postage prepaid, addressed to the County Administrative Officer, County of Mariposa, P.O. Box 784, Mariposa, CA 95338.

21. **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.

22. **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:



JOHN CARRIER, Chairman
Mariposa County Board of Supervisors

LESSEE:



Kiwanis Preschool Academy

ATTEST:



RENE LAROCHE
Clerk of the Board

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel