RESOLUTION - ACTION REQUESTED 2015-204

MEETING: May 5, 2015

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: 2015-2017 Sheriff's Office Northern Sub-Station Lease Agreement

RECOMMENDED ACTION AND JUSTIFICATION:
Approve a Two Year Lease Agreement with Mr. Thomas McHugh, Property Owner of 10549 Fiske Road, Coulterville CA 95311, for the North County Sheriff's Patrol Sub-Station, and Authorize Board of Supervisors Chair to Sign the Agreement. This location works well for the citizens of the Northern area of Mariposa County and the officers and volunteers that staff it.

Terms for the lease of the entire property is Nine Hundred Eighty Three Dollars and Forty-Five Cents ($983.45) per month for fiscal year 2015-2016 with a scheduled 3% increase in fiscal year 2016-2017. The cost associated with the lease agreement for fiscal year 2015-2016 have been included in the 2015-2016 proposed Mariposa County Sheriff's Budget.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors has approved a similar lease agreement with the property owner for this identified property.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the lease agreement. The Mariposa County Sheriff's Office will need to relocate their North County Sheriff’s Patrol Sub-station or forego having a sub-station in this area of the County.

FINANCIAL IMPACT:
Funding for lease of property has been requested in 2015-2016 Mariposa County Sheriff's Office Proposed Budget.

ATTACHMENTS:
2015 North County Substation Lease Agreement (PDF)

CAO RECOMMENDATION
RESULT:      ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:      Rosemarie Smallcombe, District I Supervisor
SECONDER:   Marshall Long, District III Supervisor
AYES:       Smallcombe, Jones, Long, Cann, Carrier
LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of July 1, 2015, by and between Thomas McHugh, hereinafter called LESSOR, and the COUNTY OF MARIPOSA, hereinafter called LESSEE.

WITNESSETH

WHEREAS, the LESSOR owns real property commonly known as 10549 Fisk Road, Coulterville, CA 95311 and more particularly described as an approximately 3200 sq. ft. metal building with vehicle parking area adjacent to building. LESSOR will allow LESSEE to occupy the entire 3200 sq. footage including those areas referenced in Exhibit “A”, Swenson area, Swenson storage, 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 10549 Fisk Road in the County of Mariposa as more particularly described in Exhibit “A”, attached hereto and incorporated herein by reference.

2. CONSIDERATION/TERM: For and in consideration of Nine Hundred Eighty Three dollars and Forty-Five Cents ($983.45) a month LESSOR agrees to lease the real property described above. This Lease shall commence on the 1st day of July 2015, and shall continue for two years (June 30, 2017), with a 3% increase in fiscal year 2016-2017, renewable thereafter as mutually agreed by the LESSOR and LESSEE. No security deposit required.

3. USE: The PREMISES which are the subject of this Lease shall be used as office space and a meeting place for the Mariposa County Sheriff's Office.
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 county activities to utilize the **PREMISES** for permitted functions and events.

7. **IN VOLUNTARY 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

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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 in excess of Two Thousand Five Hundred dollars ($2500). 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.

11. **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.

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. **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.

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

15. **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.

16. **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 ninety (90) 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.

17. **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.

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18. **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.

19. **NOTICES:** Any notice to the LESSEE 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. Any notice to the LESSOR shall be sufficient if sent by certified mail, postage prepaid, addressed to LESSOR at 3350 Riley Street, Eau Claire, WI 54701.

20. **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.

21. **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:**

Thomas McHugh
3350 Riley Street
Eau Claire, WI 54701

Date: **April 10, 2015**

**LESSEE:**

Merlin Jones, Chairman
Mariposa County Board of Supervisors

Date: **May 5, 2015**

**ATTEST:**

RENE LAROCHE
Clerk of the Board

**APPROVED AS TO FORM:**

STEVEN W. DHALEM
County Counsel
EXHIBIT 'A'

NOT TO SCALE

AREA SUBJECT TO LEASE
APPROX 1700 SQ FT

COMMON AREA

SWENSON AREA