RESOLUTION - ACTION REQUESTED 2016-86

MEETING: February 23, 2016

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Approve Early Termination of Current Color Copier Lease and Execution of New Lease

RECOMMENDATION AND JUSTIFICATION:

Approve Early Termination of Color Copier Lease Agreement with Great America Financial Services (Formerly Known As: Great America Leasing Corporation) Via Spriggs Business Systems; Approve a Five-Year Lease Agreement for a New Color Copier, and Authorize the Board of Supervisors Chair to Sign the Agreement.

Current lease for the color copier/scanner/printer will expire in April 2016. The current machine has a major part that needs replacing and although it is operating it may not last until the end of the lease term.

The new equipment is faster and more efficient. The new equipment also provides copies at a lower per sheet cost for both black and color copies.

As technology advances it is advantageous to lease a machine rather than to buy a machine. A lease affords us the ability to obtain a new machine every 5 years. Spriggs will continue to provide maintenance for the machine and the toner is included with that service.

Other County departments/programs may continue to use the machine at cost.

It is necessary for the Planning Department to have a high speed color machine in its day-to-day activities for the reproduction of maps, site plans, photographs and other colored materials for the processing or applications, code compliance files, scanning and reports that are generated for the Board of Supervisors meetings, Planning Commission Meetings and various Planning Advisory Committee meetings as well as providing copies of documents and maps to the public.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

In 2006 the Board adopted a Resolution 2006-320 which approved an extension of the 2002 lease and allowed for a trade in of the equipment for a newer, more efficient machine which actually reduced both the monthly payment and the per copy charges.

In 2011 the Board adopted Resolution 2011-131 to terminate the lease at that time and to execute a new lease for a new machine.
ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Other options would be: to purchase the existing equipment at fair market value or 2) Return the Equipment without replacement. Either of these options would be counterproductive to the departments operations.

FINANCIAL IMPACT:
No change in budget as lease payments remain the same, and are budgeted in each FY accordingly

ATTACHMENTS:
copier quote and specs (PDF)
160223 copier lse (PDF)
2011 lease (PDF)
Addendum Contract #015-0699105-000 (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson
Mary Hodson, CAO 2/17/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, John Carrier
EXCUSED: Kevin Cann
AGREEMENT

CUSTOMER: "You or Your"
FULL LEGAL NAME: Mariposa, County of DBA Mariposa County Planning
ADDRESS: 5100 Bullion St
Mariposa CA 95338-0005

EQUIPMENT AND PAYMENT TERMS

EQUIPMENT LOCATION: As Stated Above
TERM IN MONTHS: 60
MONTHLY PAYMENT AMOUNT: $393.00
PURCHASE OPTION: Fair Market Value

ADDITIONAL TERMS AND CONDITIONS

AGREEMENT. You want us to provide you the equipment referenced herein ("Equipment") and you agree to pay us the amounts payable under the terms of this Agreement and you agree to pay the additional amount equal to the periodic payments due under this Agreement provided for the period between the date the Equipment is delivered to you and the last date we designates. If we designate a later commencement date, you agree to pay us the additional amount equal to the periodic payments due under this Agreement provided for the period between the date the Equipment is delivered to you and the commencement date. We may charge you a reasonable fee to cover documentation and investigation costs. If any amount payable to us is not paid when due, you will pay a late charge equal to: 1) the greater of ten (10) cents for each dollar overdue or twenty-six dollars ($26.00); or 2) the highest lawful charge, if less.

NET AGREEMENT. THIS AGREEMENT IS NON-CANCELCABLE FOR THE ENTIRE AGREEMENT TERM. YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL AMOUNTS DUE UNDER THIS AGREEMENT FOR THE ENTIRE TERM. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THIS AGREEMENT FOR ANY REASON.

EQUIPMENT USE. You will keep the Equipment in good working order, use it for business purposes only and not modify or move it from its initial location without our consent. If we have entered into a separate arrangement with you for maintenance of the Equipment, supplies, etc. with respect to the Equipment, payments under this Agreement may include amounts owed under that arrangement, which amounts may be invoiced as one payment for your convenience.

SOFTWARE DATA. Except as provided in this paragraph, references to "Equipment" include any software referenced above or installed on the Equipment. We do not own the software and cannot transfer any interest in it to you. We are not responsible for the software or the obligations of you or the licensor under any license agreement. You are solely responsible for protecting and removing any confidential and/or copyright information stored on the Equipment prior to its return for any reason.

LIMITATION OF WARRANTIES. EXCEPT TO THE EXTENT THAT WE HAVE PROVIDED YOU A WARRANTY IN WRITING, WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU UNDERSTAND ANY/FALL THIRD-PARTY SERVICE PROVIDERS BASED ON YOUR JUDGMENT. YOU MAY CONTACT US OR THE MANUFACTURER FOR A STATEMENT OF THE WARRANTIES, IF ANY, THAT THE MANUFACTURER IS PROVIDING. WE ASSIGN TO YOU ANY WARRANTIES GIVEN TO US.

ASSIGNMENT. You may not sell, assign, or sublease the Equipment or this Agreement without our written consent. We may assign our rights in the Equipment, in whole or in part, to a third party without notice to you. You agree that if we do so, our assignees will have our assigned rights under this Agreement but none of our obligations and will not be subject to any claim, defense, or set-off that may be asserted against us or anyone else.

LIABILITY. You agree that any and all claims related to this Agreement shall be governed by the internal laws of the state in which we or (if we assign this Agreement, our assignees') principal place of business is located and any dispute concerning this Agreement will be adjudicated in a federal or state court in such state. You hereby consent to personal jurisdiction and venue in such courts and waive transfer of venue. Each party waives any right to a jury trial.

LOSS OR DAMAGE. You are responsible for any damage to or loss of the Equipment. No such loss or damage will relieve you from your payment obligation hereunder. Except for claim losses, or damages caused by our gross negligence or willful misconduct, you agree to indemnify us and our assignees, if applicable, against any claims, losses, or damages, including attorney fees, in any way relating to the Equipment. In no event will we be liable for any consequential or indirect damages.

OWNER: Spriggs Inc
3368 State Highway 99 Ste K
Merced CA 95348

NOTE/US/OUR

APPLICATIONS/DOCUMENTATION SPECIALIST

DATE: 3/23/16

UNCONDITIONAL GUARANTY

The undersigned unconditionally guarantees that the Customer will timely perform all obligations under the above Agreement. The undersigned also waives any notice if the Customer is in default and consents to any extensions or modifications granted to the Customer. In the event of default, the undersigned will immediately pay all sums due under the Terms of Agreement without requiring us or our assignees to proceed against Customer or any other party or exercise any rights in the Equipment. The undersigned, as to this guaranty, agrees to the designated forum and consents to personal jurisdiction, venue, and choice of law as stated in the Agreement, agrees to pay all costs and expenses, including attorney fees, incurred by us or our assignee related to this guaranty and the Agreement, waives a jury trial and transfer of venue, and authorizes obtaining credit reports.

CERTIFICATE OF DELIVERY AND ACCEPTANCE

The undersigned hereby certifies that all the Equipment: 1) was received, installed, inspected, accepted, and 2) is fully operational and unconditionally accepted.

APPROVED AS TO FORM:

NAME AND TITLE: STEVEN W. DAHLREN, County Counsel
DATE: 2-26-10

ORIGINAL

ZP01(TL) F0810 021016

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GOVERNMENTAL ENTITIES ADDENDUM

This is an addendum ("Addendum") to and part of that certain agreement between Spriggs Inc ("we", "our") and Mariposa, County of ("Governmental Entity", "you", or "your"), which agreement is identified in our records as agreement number 1126638 ("Agreement"). All capitalized terms used in this Addendum which are not defined herein shall have the meanings given to such terms in the Agreement.

APPLICABLE TO GOVERNMENTAL ENTITIES ONLY

You hereby represent and warrant to us that as of the date of the Agreement: (a) the individual who executed the Agreement had full power and authority to execute the Agreement on your behalf; (b) all required procedures necessary to make the Agreement a legal and binding obligation against you have been followed; (c) the Equipment will be operated and controlled by you and will be used for essential government purposes for the entire term of the Agreement; (d) that all payments due and payable for the current fiscal year are within the current budget and are within an available, unexhausted, and unencumbered appropriation; (e) you intend to pay all amounts payable under the terms of the Agreement when due, if funds are legally available to do so; (f) your obligations to remit amounts under the Agreement constitute a current expense and not a debt under applicable state law; (g) no provision of the Agreement constitutes a pledge of your tax or general revenues; and (h) you will comply with any applicable information reporting requirements of the tax code, which may include 8038-G or 8038-GC Information Returns. If funds are not appropriated to pay amounts due under the Agreement for any future fiscal period, you shall have the right to return the Equipment and terminate the Agreement on the last day of the fiscal period for which funds were available, without penalty or additional expense to you (other than the expense of returning the Equipment to the location designated by us), provided that at least thirty (30) days prior to the start of the fiscal period for which funds were not appropriated, your Chief Executive Officer (or Legal Counsel) delivers to us a certificate (or opinion) certifying that (a) you are a state or a fully constituted political subdivision or agency of the state in which you are located; (b) funds have not been appropriated for the applicable fiscal period to pay amounts due under the Agreement; (c) such non-appropriation did not result from any act or failure to act by you; and (d) you have exhausted all funds legally available for the payment of amounts due under the Agreement. You agree that this paragraph shall only apply if, and to the extent that, state law precludes you from entering into the Agreement if the Agreement constitutes a multi-year unconditional payment obligation.

GOVERNMENTAL ENTITY'S AUTHORIZED SIGNATURE

(As Stated Above)  X  John Carrier, Chair  2-26-16

SIGNATURE          PRINT NAME & TITLE       DATE

OUR SIGNATURE

Spriggs Inc

APPROVED AS TO FORM

Steven W. Dahlem
COUNTY COUNSEL

VP07NA_0610