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.

Last Revised 4/28/15
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, subleasing 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:**

[Signature]

JOHN CARRIER, Chairman
Mariposa County Board of Supervisors

**LESSEE:**

[Signature]

Kiwanis Preschool Academy

**ATTEST:**

[Signature]

RENE LAROCHE
Clerk of the Board

**APPROVED AS TO FORM:**

[Signature]

STEVEN W. DAHLEM
County Counsel