RESOLUTION - ACTION REQUESTED 2017-75

MEETING: February 21, 2017

TO: The Board of Supervisors

FROM: Dallin Kimble, Interim CAO

RE: Copy Machine Contract

RECOMMENDATION AND JUSTIFICATION:
Approve a Five-Year Agreement for Copy Machine Service with Spriggs, Inc.; and Authorize the Board of Supervisors Chair to Sign the Agreement.

The County began a five-year agreement for copy machine service with Spriggs, Inc., in December 2013. That agreement includes 29 machines located in facilities across the county.

One of those machines resides on the second floor of the Government Center and is shared by the Board of Supervisors, Administration, County Counsel and Clerk of the Board. This machine has been found not to have the reliability or functionality required by staff in these departments. As a result, these departments also maintain several less-efficient desktop printers and spend time and money working with other departments and vendors for printing services.

Spriggs, Inc., has stated that they would be willing to remove this machine from the existing agreement and replace it with a new machine that has the security, programming and color printing features requested by staff. The change in monthly lease expense would be $31.57, but all maintenance costs will remain the same and will continue to be billed quarterly at $0.0088 per copy. The new machine would also facilitate a reduction of desktop printers in the departments mentioned.

Staff recommends approving the lease to better meet department needs for quality, security, efficiency and reliability.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On December 3, 2013, the Board adopted Resolution 13-533 approving a five-year contract with Spriggs, Inc.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the contract. Staff will continue using the existing printers and working with other departments or vendors for printing services that exceed current capacity.
FINANCIAL IMPACT:
Sufficient funding has been included in the budget for copy machine costs.

ATTACHMENTS:
Spriggs Agreement (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Dallin Kimble
Dallin Kimble, Interim CAO 2/15/2017

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Kevin Cann, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Menetrey, Smallcombe, Jones, Long, Cann
Lease Agreement

CUSTOMER INFORMATION

FULL LEGAL NAME: County of Mariposa
COUNTY: Mariposa
STATE: CA
ZIP: 95338
PHONE: 209-966-3222
FAX: 
STREET ADDRESS: 5100 Bullion Street, Floor 2
BILLING NAME (IF DIFFERENT FROM ABOVE): Fiscal Department
CITY: Mariposa
STATE: CA
ZIP: 95334
PHONE: 
BILLING STREET ADDRESS: Box 784
E-MAIL: 
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE): 

SUPPLIER INFORMATION

NAME OF SUPPLIER: Spriggs, Inc
STREET ADDRESS: 3368 N. Hwy 59, Suite K
CITY: Merced
STATE: CA
ZIP: 95348
PHONE: 209-383-7505
FAX: 

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES: Konica Minolta c658 including PC415, PK520, FS536+RU514
SERIAL NO: A795210002712

TERM AND PAYMENT SCHEDULE

Term in __60__ Months 60 Payments* of $ 415.13 *plus applicable taxes

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initialed at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing. If no box is checked and initialed, then the Fair Market Value will be your end of lease option. Leases with $1.00 or $101.00 purchase options will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.

☐ 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3.

The lease contract payment ("Payment") period is monthly unless otherwise indicated.

Customer's Initials: __________

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

U.S. Bank Equipment Finance

LENDER

SIGNATURE

TITLE

DATED

3/3/17

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

COUNTY OF MARIPSOA

SIGNATURE

TITLE

DATED

2/12/17

FEDERAL TAX ID#: __________

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon signing below, your promises herein will be irrevocable and unconditional in all respects. You understand that we have purchased the Equipment from the supplier, and you may contact the supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchases of the Equipment from the supplier is a condition precedent to the effectiveness of this Agreement.

COUNTY OF MARIPSOA

SIGNATURE

TITLE

DATED

3/1/17

THIS IS COUNTERPART NO. 2 OF 2 SERIALLY NUMERATED, MANUALLY EXECUTED COUNTERPARTS OF THIS AGREEMENT TO THE EXTENT THAT THIS AGREEMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE ACQUIRED THROUGH TRANSFER AND POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.
1. AGREEMENT: For business purposes only, you agree to lease from us the goods ("Equipment") and/or to finance certain licensed software and services ("Financed Items"), which are included in the word "Equipment" unless separately stated, all as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name. To the extent any supplement or other agreement by you of this Agreement is not in accordance with the terms of this Agreement, the terms of this Agreement shall control. This Agreement shall remain in full force and effect in that jurisdiction and all others.

2. RENT, TAXES AND FEES: You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code ("UC") or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of $30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST: At your expense, you agree to keep the Equipment in good working order and in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement, if you do not purchase the Equipment, you will return all of the Equipment and all related manuals and use and maintenance records to the location specified, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard disks, drive keys or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement ("UC-1"). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UC-1. We will notify you within 30 days if your state of organization revokes or terminates your existence.

4. COLLATERAL PROTECTION, INSURANCE, INDEMNITY, LOSS OR DAMAGE: You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy shall provide for 10 days' notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance to us at any time we reasonably require. In the event of any loss to the Equipment, you shall be required to give us written notice thereof immediately, and you shall cooperate in our efforts to obtain the proceeds of any such claim. The proceeds of any such claim shall be held in trust for us, pending settlement of such claim, until we have reimbursed you for the Equipment. Upon the settlement of any such claim, the proceeds shall be paid to us first to reimburse you for any loss or damage to the Equipment and then to pay any other costs or expenses incurred in connection with the loss or damage to the Equipment, including reasonable attorneys' fees and disbursements. You agree to pay us the net proceeds of any such claim. If the Equipment is lost or destroyed, you agree to pay us the full replacement cost of the Equipment. If the loss or damage to the Equipment is not covered by insurance, you agree to pay us the full replacement cost of the Equipment. In the event of any loss or damage to the Equipment, you agree to cooperate with us in attempting to recover any such loss or damage from any third party.

5. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reassign or merge with any other entity, transfer all or any substantial part of your ownership interests or assets. We may sell, assign or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, the new Lessor will have all of the rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, offsets or that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate such an assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. DEFAULT AND REMEDIES: If you fail to pay any Payment when due, or if you make any breach of any of your promises in this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or property, (e) you default under any provision of this Agreement, you agree to pay a late charge of 10% of the Payment which is late or, if less, the maximum charge allowed by law. If you are in default, in our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any amounts due to you from us. In the event of a default, in our option, we may, (a) sell, assign or transfer the Equipment to one or more third parties, (b) balance our books, (c) purchase the Equipment at any sale made by us, (d) exercise all remedies provided by law or by this Agreement, and (e) exercise any rights you agree to grant us under this Agreement. You agree to pay any reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. You will have no right to take possession of the Equipment. You agree to pay the costs of repossession, moving, storage and repurchase. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPECTFUL TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that your rights and remedies are governed exclusively by this Agreement. You waive all rights under Article 2A (506-522) of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. INSPECTIONS AND REPORTS: We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income and a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end; and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. FIXED OR SCANNED DOCUMENTS, MISC.: You agree to submit the original duly signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any fixed or scanned copy may be considered, in the original, and you waive the right to challenge in court the authenticity or binding effect of any fixed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as may be party in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of further consent, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. WARRANTY DISCLAIMERS: YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH OTHER PARTIES BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN CREATE ANY OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARDS TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

10. LAW, JURY WAIVER: Agreements, promises and commitments made by Lessor, concerning loans and other credit extensions must be in writing, express consideration and be signed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment. YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

LEASE AGREEMENT
Page 2 of 2
Rev. 12/02/2011
in accordance with this Agreement. If there are Disputes by or against multiple parties, some of which are not subject to this Agreement, the Parties shall sever the Disputes subject to this Agreement and resolve them in accordance with this Agreement.

8. During the pendency of any Dispute which is submitted to judicial reference in accordance with this Agreement, each of the Parties to such Dispute shall bear equal shares of the fees charged and costs incurred by the referee in performing the services described in this Agreement. The compensation of the referee shall not exceed the prevailing rate for like services. The prevailing party shall be entitled to reasonable court costs and legal fees, including customary attorney fees, expert witness fees, paralegal fees, the fees of the referee and other reasonable costs and disbursements charged to the party by its counsel, in such amount as is determined by the Referee.

9. In the event of any challenge to the legality or enforceability of this Agreement, the prevailing Party shall be entitled to recover the costs and expenses from the non-prevailing Party, including reasonable attorneys’ fees, incurred by it in connection therewith.

10. THIS AGREEMENT CONSTITUTES A "REFERENCE AGREEMENT" BETWEEN OR AMONG THE PARTIES WITHIN THE MEANING OF AND FOR PURPOSES OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

IN WITNESS WHEREOF, Lessor/Secured Party and Customer have each caused this California Judicial Reference Agreement to be duly executed as of ______, 20__.

County of Mariposa

Lessor/Secured Party

Cyndi Darahka

Signature

Doc Analyst

3.3.17

Title

Date

Customer

X

Signature

Board Chair

2-23-17

Title

Date

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.
This California Judicial Reference Agreement ("Agreement") is entered into in connection with any existing financing ("Financing") provided by US Bank ("Lessor/Secured Party") to County of Mariposa ("Customer") evidenced, secured and/or supported by one or more leases, loan agreements, notes, security agreements, guaranties, and/or other documents, together with any and all schedules and riders thereto and any and all other agreements executed and delivered by Customer in connection therewith, being hereinafter referred to as the "Financing Documents."

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto (collectively, the "Parties") agree as follows:

1. Any and all disputes, claims and controversies arising out of the Financing Documents or the transactions contemplated thereby (including, but not limited to, actions arising in contract or tort and any claims by a Party against Lessor/Secured Party related in any way to the Financing) (individually, a "Dispute") that are brought before a forum in which pre-dispute waivers of the right to trial by jury are invalid under applicable law shall be subject to the terms of this Agreement in lieu of the jury trial waivers otherwise provided in the Financing Documents.

2. Any and all Disputes shall be heard by a referee and resolved by judicial reference pursuant to California Code of Civil Procedure Sections 638 et seq.

3. The referee shall be a retired California state court judge or an attorney licensed to practice law in the State of California with at least ten (10) years’ experience practicing commercial law. The Parties shall not seek to appoint a referee that may be disqualified pursuant to California Code of Civil Procedure Section 641 or 641.2 without the prior written consent of all Parties.

4. If the Parties are unable to agree upon a referee within ten (10) calendar days after one Party serves a written notice of intent for judicial reference upon the other Party or Parties, then the referee will be selected by the court in accordance with California Code of Civil Procedure Section 640(b).

5. The referee shall render a written statement of decision and shall conduct the proceedings in accordance with the California Code of Civil Procedure, the Rules of Court, and California Evidence Code, except as otherwise specifically agreed by the parties and approved by the referee. The referee's statement of decision shall set forth findings of fact and conclusions of law. The decision of the referee shall be entered as a judgment in the court in accordance with the provisions of California Code of Civil Procedure Sections 644 and 645. The decision of the referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the superior court.

6. Nothing in this Agreement shall be deemed to apply to or limit the right of Lessor/Secured Party (a) to exercise self help remedies such as (but not limited to) setoff, (b) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (c) to obtain from a court provisional or ancillary remedies (including, but not limited to, injunctive relief, a writ of possession, prejudgment attachment, a protective order or the appointment of a receiver), or (d) to pursue rights against a Party in a third-party proceeding in any action brought against Lessor/Secured Party (including actions in bankruptcy court). Lessor/Secured Party may exercise the rights set forth in the foregoing clauses (a) through (d), inclusive, before, during or after the pendency of any judicial reference proceeding. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies or the opposition to any such provisional remedies shall constitute a waiver of the right of any Party, including, but not limited to, the claimant in any such action, to require submission to judicial reference the merits of the Dispute occasioning resort to such remedies. No provision in the Financing Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Financing Document for judicial reference of any of Dispute.

7. If a Dispute includes multiple claims, some of which are found not subject to this Agreement, the Parties shall stay the proceedings of the Disputes or part or parts thereof not subject to this Agreement until all other Disputes or parts thereof are resolved.

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.
Any provision in the Agreement stating that we may assign this Agreement is hereby amended and restated as follows: “We may sell, assign, or transfer this Agreement without notice to or consent from you, and you waive any right you may have to such notice or consent.”

Any provision in the Agreement stating that you grant us a security interest in the Equipment to secure all amounts owed to us under any agreement is hereby amended and restated as follows: “To the extent permitted by law, you grant us a security interest in the Equipment to secure all amounts you owe us under this Agreement, and you authorize us to file a UCC-1 financing statement or be named on the vehicle title to show our interest.”

Any provision in the Agreement stating that you shall indemnify and hold us harmless is hereby amended and restated as follows: “You shall not be required to indemnify or hold us harmless against liabilities arising from the Agreement. However, as between you and us, and to the extent permitted by law and legally available funds, you shall bear the risk of loss for, shall pay directly, and shall defend against any and all claims, liabilities, proceedings, actions, expenses, damages or losses arising under or related to the Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof, except that you shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise directly from events occurring after you have surrendered possession of the Equipment in accordance with the terms of the Agreement to us or that arise directly from our gross negligence or willful misconduct.”

Any provision in the Agreement stating that a default by you under any agreement with our affiliates or other lenders shall be an event of default under the Agreement is hereby amended and restated as follows: “You will be in default if: (i) you do not pay any Payment or other sum due to us under the Agreement when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement, (ii) you make or have made any false statement or misrepresentation to us, (iii) you dissolve, terminate your existence or file bankruptcy, or (iv) there has been a material adverse change in your financial, business or operating condition.”

Any provision in the Agreement stating that you shall pay our attorneys' fees is hereby amended and restated as follows: “In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay, to the extent permitted by law and to the extent of legally available funds, our reasonable attorneys’ fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee.”

Any provision in the Agreement requiring you to pay amounts due under the Agreement upon the occurrence of a default, failure to appropriate funds or failure to renew the Agreement is hereby amended to limit such requirement to the extent permitted by law and legally available funds.

Any provision in the Agreement stating that the Agreement is governed by a particular state's laws and you consent to such jurisdiction and venue is hereby amended and restated as follows: “This Agreement will be governed by and construed in accordance with the laws of the state where you are located. You consent to jurisdiction and venue of any state or federal court in such state and waive the defense of inconvenient forum.”

By signing this Addendum, Customer acknowledges the above changes to the Agreement and authorizes Lessor to make such changes. In all other respects, the terms and conditions of the Agreement remain in full force and effect and remain binding on Customer.

U.S. Bank Equipment Finance

Lessor

Cyndi Panseh

Signature

Title

3.3.17

Date

County of Mariposa

Customer

X

Signature

Board Chair

2-23-17

Date

APPROVED AS TO FORM:

STEWN W. DAHLEM
COUNTY COUNSEL

NOTE: SIGNER OF THIS DOCUMENT MUST BE SAME AS ON THE AGREEMENT. A FACSIMILE OF THIS DOCUMENT WITH SIGNATURE SHALL BE CONSIDERED TO BE AN ORIGINAL. CAPITALIZED TERMS IN THIS DOCUMENT ARE DEFINED AS IN THE AGREEMENT, UNLESS SPECIFICALLY STATED OTHERWISE.

10162 REV 01/14

THIS IS COUNTERPART NO. 2 OF 2 SERIALLY NUMBERED, MANUALLY EXECUTED COUNTERPARTS OF THIS AGREEMENT TO THE EXTENT THAT THIS AGREEMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION. NO SECURITY INTEREST IN THIS AGREEMENT MAY BE PERFECTED THROUGH TRANSFER AND POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.
Addendum to Agreement #________, dated __________, between County of Mariposa, as Customer and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as Lessor.

The parties wish to amend the above-referenced Agreement by adding the following language:

**REPRESENTATIONS AND WARRANTIES OF CUSTOMER:** You hereby represent and warrant to us that: (a) you have been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of your governing body to execute and deliver this Agreement and to carry out your obligations hereunder; (b) all legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement; (c) this Agreement is in compliance with all laws applicable to you, including any debt limitations or limitations on interest rates or finance charges; (d) the Equipment will be used by you only for essential governmental or proprietary functions of you consistent with the scope of your authority, will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and your need for the Equipment is not expected to diminish during the term of this Agreement; (e) you have funds available to pay contracted Payments until the end of your current appropriation period, and you intend to request funds to make contracted Payments in each appropriation period, from now until the end of the term of this Agreement; and (f) your exact legal name is as set forth on page one of this Agreement.

**NON-APPROPRIATION OR RENEWAL:** If either sufficient funds are not appropriated to make contracted Payments or any other amounts due under this Agreement or (to the extent required by applicable law) this Agreement is not renewed, this Agreement shall terminate and you shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, you shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to us. If you fail to deliver possession of the Equipment to us, the termination shall nevertheless be effective but you shall be responsible, to the extent permitted by law and legally available funds, for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which you fail to deliver possession and for any other loss suffered by us as a result of your failure to deliver possession as required. You shall notify us in writing within seven days after your failure to appropriate funds sufficient for the payment of the contracted Payments or (to the extent required by applicable law) this Agreement is not renewed, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to you.

**TITLE TO THE EQUIPMENT:** If the selected purchase option for this Agreement is $1.00 or $101.00, unless otherwise required by law, upon your acceptance of the Equipment, title to the Equipment shall be in your name, subject to our interest under this Agreement.

The parties wish to amend the above-referenced Agreement by restating the following language:

Any provision in the Agreement stating this Agreement supersedes any invoice and/or purchase order is hereby amended and restated as follows: “You agree that the terms and conditions of the Agreement and any supplement or schedule thereto and any related acceptance certificate constitutes the entire agreement regarding the financing or lease of the Equipment and supersedes any purchase order, invoice, request for proposal or other related document.”

Any provision in the Agreement stating that the Agreement shall automatically renew unless the Equipment is purchased, returned or a notice requirement is satisfied is hereby amended and restated as follows: “This Agreement will renew for month-to-month terms unless you purchase or return the Equipment (according to the conditions herein) or send us written notice at least 30 days (before the end of any term) that you do not want it renewed.”