RESOLUTION - ACTION REQUESTED 2017-417
MEETING: June 27, 2017

TO: The Board of Supervisors
FROM: Eric Sergienko, Health Officer
RE: Spriggs Agreement for Copy Machine Services

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

The Health Education section of the Health Department moved to a new location in late May to 5078 Bullion Street, therefore, there is a need for a copier/printer/scanner/fax machine in this new location.

The monthly lease price is $72.93. Maintenance, services and supply costs is $0.012 per copy.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
One December 3, 2013, the Board of Supervisors adopted Resolution 2013-533 approving a five-year lease contract with Spriggs, Inc. On December 2, 2008, the Board adopted Resolution 08-557 approving a five-year contract from 2008-2014.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the contract. Staff will need to identify another vendor to provide copy machine service which may be at a higher cost.

FINANCIAL IMPACT:
Sufficient grant funding has been included in the proposed Fiscal Year 2017-18 Budget for copy machine lease services.

ATTACHMENTS:
Spriggs Agreement(PDF)
Governmental Entities Addendum (PDF)
Spriggs Quotation (PDF)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT

CUSTOMER: Spriggs Inc

FULL LEGAL NAME: Mariposa County of

ADDRESS: PO Box 2039

Mariposa CA 95338-2039

EQUIPMENT AND PAYMENT TERMS

TYPE, MAKE, MODEL NUMBER, SERIAL NUMBER, AND INCLUDED ACCESSORIES

1 Lexmark XM4526 Monochrome MFP

STANDARD payments due under this Agreement are to be made to Spriggs Inc, not to a lesser legal sum. The equipment is delivered to you and the commencement date. We may charge you a reasonable fee to cover collection 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) percent for each delinquency or twenty-five dollars ($25.00); or (2) the highest lawful charge, if less.

NET AGREEMENT. This AGREEMENT IS NON-CANCELABLE FOR THE ENTIRE TERM OF THE AGREEMENT. YOU AGREE THAT YOU ARE UNCONDITIONALLY OBLIGATED TO PAY ALL AMOUNTS DUE UNDER THE AGREEMENT. YOU ARE NOT ENTITLED TO REDUCE OR SET-OFF AGAINST AMOUNTS DUE UNDER THE AGREEMENT NO MORE THAN 60 MONTHLY PAYMENTS.

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 terminate this Agreement, you agree to return the Equipment to us and pay all associated 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) percent for each delinquency or twenty-five dollars ($25.00); or (2) the highest lawful charge, if less.

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 CHOOSE ANY AND ALL THIRD-PARTY SERVICE PROVIDERS BASED ON YOUR OWN JUDGMENT. YOU MAY CONTACT US OR THE MANUFACTURER FOR A STATEMENT OF THE WARRANTIES IN EFFECT. ANY, THAT THE MANUFACTURER PROVIDES IS ADEQUATELY OR ANY WARRANTIES GIVEN TO US. ASSIGNMENT. You may not sell, assign, or sublease the Equipment or this Agreement without our written consent. We may sell or assign this Agreement and the Equipment to a third party without notice to you. You agree to sell the Equipment or the Equipment to a third party without notice to you.

LAW OF THE LAND. You agree that this Agreement and any claim related to this Agreement shall be governed by the Internal law of the State in which it was executed by the parties or, if the executed Agreement, our assignee's principal place of business is located and any disputes arising out of this Agreement will be adjudicated in a federal or state court in that 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.

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

CUSTOMER'S AUTHORIZED SIGNATURE

SIGNATURE: [Signature]

DATE: 7/13/17

PRINT NAME & TITLE: [Name and Title]

UNCONDITIONAL GUARANTEE

The undersigned, as additional guarantor under the Agreement, shall timely perform all obligations under the Agreement. The undersigned agrees that, in the event of default, the undersigned will make all payments due under the Agreement without requiring us or our assignee to proceed against the 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 set forth in the Agreement.

CERTIFICATE OF DELIVERY AND ACCEPTANCE

The Customer hereby certifies that all the Equipment: (1) has been received, installed, and inspected, and (2) is fully operational and unconditionally accepted.

APPROVED AS TO FORM:

STEVEN W. DAILEM
COUNTY COUNSEL

RES. NO. 17-417
GOVERNMENTAL ENTITIES ADDENDUM

This is an addendum ("Addendum") to and part of that certain agreement between Spriggs Inc. ("we", "us", "our") and Mariposa County of ("Governmental Entity", "you", "your"), which agreement is identified in our records as agreement number 1256772 ("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.

The undersigned, as a representative of the Governmental Entity, agrees that this Addendum is made a part of the Agreement.

GOVERNMENTAL CERTIFICATE

Signature: [Signature]

Marshall Long, Chair, Board of Supervisors

Spriggs Inc

APPROVED AS TO FORM:

[Signature]

STEVEN W. DAHLEM

COUNTY COUNSEL