RESOLUTION - ACTION REQUESTED 2017-688

MEETING: October 10, 2017

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Facilities Use Agreement Between County of Mariposa and Greeley Hill Community Club

RECOMMENDATION AND JUSTIFICATION:
Approve a Facilities Use Agreement with Greeley Hill Community Club for the Use of the Real Property Commonly Known as the Greeley Hill Community Hall and Senior Annex for a Term of Ten (10) Years; and Authorize the Board of Supervisors Chair to Sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
In 2005 the County entered into an Agreement with the Greeley Hill Community Club to operate and maintain the real property known as the Greeley Hill Community Hall and Senior Annex.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the Agreement. The County may need to find another location to deliver services in the area and may incur additional expense.

FINANCIAL IMPACT:
$2,000 per year is budgeted in the Facilities Maintenance Budget.

ATTACHMENTS:
GHCC Facilities Use Agt (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Miles Menetrey
EXCUSED: Kevin Cann
FACILITIES USE AGREEMENT BETWEEN THE COUNTY OF MARIPOSA AND THE GREELEY HILL COMMUNITY CLUB, INC.

THIS FACILITIES USE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of October 1, 2017, by and between the COUNTY OF MARIPOSA, hereinafter called COUNTY, and the GREELEY HILL COMMUNITY CLUB, INC., hereinafter called CLUB.

WITNESSETH

WHEREAS, COUNTY owns real property commonly known as the Greeley Hill Community Hall and Senior Annex; and

WHEREAS, COUNTY wishes to provide for the use of said property by CLUB;

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS AGREED AS FOLLOWS:

1. PREMISES: The PREMISES is the real property located in the town of Greeley Hill, County of Mariposa, generally described as follows: Land located at 10332 Fiske Road, Greeley Hill, California 95311 that contains an approximate 3,162 square feet structure known as the Greeley Hill Community Hall and an approximate 1,232 square feet structure known as the Greeley Hill Community Hall Senior Citizens Annex.

2. TERM: This Agreement shall commence on October 1, 2017, and shall expire on June 30, 2026, renewable thereafter as mutually agreed by COUNTY and CLUB.

3. CONSIDERATION: For and in consideration of CLUB agreeing to serve as the official custodian of the PREMISES, CLUB may use the PREMISES as set forth in this Agreement at no charge. CLUB shall be responsible for scheduling public use of the PREMISES in accordance with County facility use rules and regulations and coordinating those events and use with the County Parks and Recreation Division of the Public Works Department. COUNTY shall pay to CLUB the sum of $5000 per year for the CLUB’S services and payment of utilities as set forth herein.

4. USE: The PREMISES which are the subject of this Agreement shall be used as a community hall.

5. COMPLIANCE WITH LAW: The use of the PREMISES by CLUB shall at all times be subject to all federal and state laws and ordinances of the County of Mariposa.
COUNTY warrants that the PREMISES is at the time of this Agreement in compliance with all laws and ordinances.

6. **INSPECTION BY CERTIFIED ACCESS SPECIALIST:** As required by California Civil Code section 1938, COUNTY represents that the PREMISES have not undergone inspection by a Certified Access Specialist (CASp).

7. **ASSIGNMENT:** Except as expressly provided herein, CLUB shall not assign this Agreement nor any right hereunder, nor sublet the PREMISES, nor any part thereof, or suffer any other person to occupy the PREMISES or any portion thereof without prior written consent of COUNTY, 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 COUNTY terminate this Agreement. This provision does not prohibit the CLUB from renting or allowing other parties to utilize the PREMISES for permitted functions and events.

8. **USE BY SCHOOL DISTRICT:** COUNTY and CLUB acknowledge and recognize that the PREMISES are also subject to a Facilities Use Agreement between COUNTY and MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT ("MCUSD"), a copy of which is attached hereto as Exhibit A and made a part hereof. Nothing in this Agreement is to be interpreted to affect the obligations of COUNTY with respect to MCUSD'S Facilities Use Agreement.

9. **IMPROVEMENTS, CONSTRUCTION, ALTERATION, REMOVAL:** Subject to prior written approval from COUNTY, CLUB may maintain on the PREMISES improvements as necessary to facilitate the use of the PREMISES. Any such improvements shall remain the sole and separate property of COUNTY.

10. **MAINTENANCE AND REPAIR:** CLUB shall keep and maintain the PREMISES, including, but not limited to, the roof, heating and cooling, in good condition and repair during the term hereof up to the maximum of $500 per year, effective as of the commencement of this Agreement. In addition, CLUB shall perform all routine daily maintenance and repairs, e.g., janitor service, replacing light bulbs, care of exterior plants and shrubs, disposal of waste, etc.

11. **RIGHT OF RE-ENTRY OF COUNTY:** It is expressly agreed that in the event CLUB creates or causes any breach of this Agreement, COUNTY shall have the right and option to re-enter said PREMISES, take possession thereof, and remove all persons as provided by law.

12. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, CLUB promises and agrees to deliver unto COUNTY the PREMISES in as good condition as at the date of execution of this Agreement, reasonable wear and tear excepted.

13. **POSSESSORY INTEREST:** CLUB recognizes and understands that to the extent this Agreement may or may not create a possessor interest subject to property taxation
that the CLUB is solely responsible for the payment of any taxes levied or assessed on the PREMISES. COUNTY expresses no opinion on the taxable affect of this Agreement.

14. **INSURANCE:** CLUB shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the CLUB's operation and use of the leased premises. The cost of such insurance shall be borne by CLUB.

A. **Minimum Scope And Limit Of Insurance**

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than $1,000,000 per accident for bodily injury or disease. (for lessees with employees).

3. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If CLUB maintains broader coverage and/or higher limits than the minimums shown above, COUNTY requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to COUNTY.

B. **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status: COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CLUB including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CLUB's insurance at (least as broad as ISO Form CG 20 10).

2. Primary Coverage: For any claims related to this contract, the CLUB's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, and volunteers. Any
insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be excess of the CLUB's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to COUNTY.

(4) Waiver of Subrogation: CLUB hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CLUB may acquire against COUNTY by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

(5) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to COUNTY.

(6) Self-Insured Retentions: Self-insured retentions must be declared to and approved by COUNTY. At the option of COUNTY, either: CLUB shall obtain coverage to reduce or eliminate such self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CLUB shall provide a financial guarantee satisfactory to COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or COUNTY.

(7) Verification of Coverage: CLUB shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CLUB's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(8) Special Risks or Circumstances: COUNTY reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

15. INDEMNITY: CLUB agrees to indemnify, protect, defend and hold COUNTY 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 CLUB'S use or the use of any guests, invitees or agents of CLUB of the PREMISES. Upon demand CLUB shall, at its own expense, defend COUNTY, 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 CLUB. COUNTY shall indemnify, protect, defend, and hold CLUB 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 COUNTY’S obligations to maintain and repair the PREMISES, or any negligence of COUNTY, or any structural or other defects of the PREMISES.

16. **INSPECTION:** COUNTY 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 COUNTY is obligated to do.

17. **TERMINATION PRIOR TO EXPIRATION:**
   A. COUNTY shall have the right to terminate this Agreement on the occurrence of any of the following events:
   
   (i) The failure of CLUB to perform or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Agreement.
   
   (ii) The abandonment of the PREMISES. Should this occur COUNTY shall not be responsible for the custodial protection of CLUB’S abandoned property, fixtures or equipment.
   
   B. COUNTY and CLUB shall each have the right to terminate this Agreement upon sixty (60) days written notice.

18. **BREACH:** In the event of breach of this Agreement by CLUB, COUNTY 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 Agreement 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 CLUB as an agent or representative of COUNTY for any purpose or in any manner whatsoever.

20. **NOTICES:** Any notice to COUNTY 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 CLUB shall be sufficient if sent by certified mail, postage prepaid, addressed to the President, Greeley Hill Community Club, PMB 365, 6386 Greeley Hill Road, Coulterville, CA 95311.

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 Agreement shall be binding upon and inure to the benefit of all the heirs, successors and assigns of the parties.
23. **GOVERNING LAW:** This Agreement shall be interpreted pursuant to the laws of the State of California.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**COUNTY OF MARIPOSA:**

Marshall Long, Chairman
Mariposa County Board of Supervisors

**GREELEY HILL COMMUNITY CLUB:**

President
Greeley Hill Community Club, Inc.

**ATTEST:**

RENE LAROCHE
Clerk of the Board

**APPROVED AS TO FORM:**

STEVEN W. DAHLEMS
County Counsel