RESOLUTION - ACTION REQUESTED 2019-206

MEETING: April 16, 2019

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: 2019-2020 Animal Control Lease Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve a Lease Agreement with William Freeman for the Property Located at 5012 Fairgrounds Drive for Use as an Animal Control Facility; and Authorize the Board of Supervisors Chair to Sign the Agreement.

On December 1, 2001, William Freeman and the County of Mariposa entered into a lease agreement for the property located at 5012 Fairgrounds Drive, Mariposa, California. The property leased has been used by Mariposa County Animal Control to house abandoned, lost and owner released animals. The current lease agreement for the property will expire on June 30, 2019.

The annual increase of 3% that will go into effect on January 1, 2020, will result in an increase of $444.36 over the cost of the previous lease agreement and will be included in the Requested Fiscal Year 2019/2020 Budget for the Sheriff's Department.

The lease agreement is for one (1) year and would be in place from July 1, 2019 through June 30, 2020.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has annually approved this Lease Agreement since December 2001.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If the lease agreement is not authorized the Mariposa County Animal Control Facility will need to be relocated to new site by June 30, 2019.

FINANCIAL IMPACT:
The 3% increase in the lease amount of $444.36 for six months will be included in the Fiscal Year 2019-2020 requested budget for the Sheriff's Department.

ATTACHMENTS:
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ACO Lease Agreement 2019-2020  (DOC)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Kevin Cann
EXCUSED: Miles Menetrey
LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of July 1, 2019, by and between William A. Freeman, hereinafter referred to as LESSOR, and the County of Mariposa, hereinafter referred to as LESSEE.

WITNESSETH

WHEREAS, LESSOR owns real property located in the County of Mariposa commonly known as 5012 Fairgrounds Drive, Mariposa, California 95338; 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 in the County of Mariposa commonly known as the Mariposa County Sheriff’s Animal Control Facility, 5012 Fairgrounds Drive, Mariposa, California.

2. CONSIDERATION: For and in consideration of Two Thousand Four Hundred Sixty Eight and 51/100 Dollars ($2468.51) per month for the months of July through December 2019 and the sum of Two Thousand Five Hundred Forty Two and 57/100 Dollars ($2542.57) for the months of January through June 30, 2020. LESSOR agrees to lease the real property described above commencing July 1, 2019, and terminating on June 30, 2020. 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 an Impound Facility for unwanted/stray domestic pets from Mariposa County and serve as the Office for Mariposa County Sheriff’s Office Animal Control Staff. **LESSEE** hereby warrants that it is a 3200 sq. ft. metal building with vehicle parking area adjacent to the building.

4. **COMPLIANCE WITH LAW:** LESSEE shall comply with all laws, ordinances, rules, regulations and requirement of county, state and federal government, or of any department, bureau or official thereof having jurisdiction.

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

6. **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, subletting 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. **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.
8. **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.

9. **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.

10. **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.

11. **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.

12. 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.

13. CHANGE OF ADDRESS: It shall be LESSOR'S responsibility to inform LESSEE of any change of address.

14. 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.

15. 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.

16. **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.

17. **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.

18. **NOTICES:** Any notice to the **LESSEE** shall be sufficient if sent by certified mail, postage prepaid, addressed to County Administrative Officer, County of Mariposa, P.O. Box 784, Mariposa, CA 95338. Any notice to the **LESSOR** shall be sufficient if sent by certified mail, postage prepaid, addressed to William A. Freeman, 624 Shadowhawk Way, Walnut Creek, CA. 94595.

19. **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.

20. **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:

William A. Freeman

LESSEE:

Miles Menetrey, Chairman
Mariposa County Board of Supervisors
By Kevin Cann, Vice-Chair

ATTEST:

RENE LAROCHE
Clerk of the Board

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel