RESOLUTION - ACTION REQUESTED 2020-6

MEETING: January 7, 2020

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Quest Lease Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve a Lease Agreement with Quest Laboratories to Provide routine tests; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Earlier this year, the County purchased property for a health clinic at 5300 State Highway 49 in Mariposa. Quest Labs was a tenant in the purchased facility prior to County acquisition and it is desirable at this time for Quest Labs to remain in place.

Quest Labs provides a variety of medical test and diagnostic services including routine tests of blood or urine, drug testing, glucose tolerance testing, and other similar diagnostic tools. These services support the health of our community and the needs of local employers in a manner that is consistent with the public health clinic hosted in the remainder of the building.

The negotiated five-year lease includes the right for the County to terminate the agreement without cause with 180 days' written notice. Monthly rent escalates over the term of the lease from $299.60/month in year one to $337.20/month in year five.

Finding this agreement to be aligned with the County's stated values and strategic objectives, staff recommends approval at this time.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board approved the purchase of property at 5300 State Highway 49 in Mariposa with Resolution 2019-305 on June 4, 2019.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve. Staff will notify Quest Labs, which will have to relocate. Given a short supply of good office space for medical use in Mariposa, it is possible this alternative would lead to Quest deciding to leave our community.

FINANCIAL IMPACT:
This agreement will generate $3,500 - $4,000 in annual revenue for the term of the agreement.
ATTACHMENTS:
Quest Labs Lease Agreement  (DOCX)

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

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of January 7, 2019, by and between the County of Mariposa, hereinafter called LESSOR, and Unilab Corporation doing business as Quest Diagnostics, hereinafter called LESSEE.

WITNESSETH

WHEREAS, the LESSOR owns real property located in the County of Mariposa commonly known as 5300 Highway 49, Mariposa, California or the Community Health Center; and;

WHEREAS, the parties wish to provide for the leasing of 214 square feet of rentable space within said property, as identified in Exhibit A ("Premises"), by the LESSOR to the LESSEE;

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

1. PREMISES: The leased PREMISES is the real property located at 5300 Highway 49, in the County of Mariposa, commonly known as the Rose Building.

2. CONSIDERATION/TERM: For and in consideration of a fixed monthly amount as set forth in Exhibit B, LESSOR agrees to lease the real property described above commencing November 1, 2019 and concluding on December 31, 2024. 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 medical laboratory and related customer amenities. LESSEE hereby warrants that it is a Medical Laboratory.

4. 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). LESSOR warrants that the PREMISES is at the time of this Lease in compliance with all laws and ordinances.

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether
the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or Tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or Tenant, if requested by the lessee or Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

4. **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.

Notwithstanding any provisions to the contrary contained in this Lease, this Lease may be assigned, or the Premises may be sublet, in whole or in part, without the consent of Lessor and without Lessee incurring any liability, fees or costs relating to assignment or subletting, to (a) any corporation into or with which Lessee may be merged or consolidated, (b) to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of Lessee, (c) to any corporation which controls or is controlled by or is under common control with Lessee, (d) to any person or entity which acquires substantially all of the assets of Lessee in the normal course of business, or (e) a corporation which may be merged or consolidated into or with Lessee, provided that Lessee shall remain liable to Lessor for the performance of all of Lessee’s obligations hereunder.

5. **IMPROVEMENTS, CONSTRUCTION, ALTERATION, REMOVAL:** LESSEE may maintain on the PREMISES improvements as necessary to facilitate the use of the PREMISES.

6. **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 as well as providing janitorial services on a daily basis Monday through Friday, excluding holidays. Failure to repair and maintain the
PREMISES shall be a breach of this Lease and LESSEE may at its option terminate this Lease.

7. **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.

8. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, LESSEE promises and agrees to deliver to LESSOR the Leased PREMISES in as good condition as at the date of execution of this Agreement, reasonable wear and tear excepted.

9. **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 effect of this Lease.

10. **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 negligence or willful act 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.

11. **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. 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 Lessee improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If LESSEE maintains broader coverage and/or higher limits than the minimums shown above, LESSOR 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 LESSOR.

B. Other Insurance Provisions

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

(1) Additional Insured Status: LESSOR, its officers, officials, employees, and volunteers are to be listed as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of LESSEE 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 LESSEE's insurance at (least as broad as ISO Form CG 20 10.

(2) Primary Coverage: For any claims related to this contract, the LESSEE's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the LESSOR, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the LESSOR, its officers, officials, employees, or volunteers shall
be excess of the LESSEE'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 LESSOR.

(4) Waiver of Subrogation: LESSEE hereby grants to LESSOR a waiver of any right to subrogation which any insurer of said LESSEE may acquire against LESSOR by virtue of the payment of any loss under such insurance. LESSEE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not LESSOR 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 LESSOR.

(6) Self-Insured - Notwithstanding anything to the contrary contained herein, Lessee may self-insure for all or any portion of the minimum limits of insurance required to be carried by Lessee hereunder.

(7) Verification of Coverage: LESSEE shall furnish LESSOR 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 LESSOR before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the LESSEE's obligation to provide them. LESSOR reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at anytime.

(8) Special Risks or Circumstances: LESSOR 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.

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 and upon reasonable notice 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 immediately 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** without payment of rent. 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 for convenience upon sixty (60) days written notice.

C. **LESSOR** shall have the right to terminate this Lease for convenience upon one hundred eighty (180) days written notice any time..

19. **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. **LESSOR** shall have the right to terminate this Lease without cause upon one hundred eighty (180) days written notice.

20. **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.

21. **NOTICES**: All notices required or provided for in this Agreement shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified herein below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

**Notice to COUNTY shall be addressed as follows:**

County Administrative Officer  
P.O. Box 789  
Mariposa, California 95338
Notice to LESSEE shall be addressed as follows:

Quest Diagnostics
Attn: Corporate Real Estate
3714 Northgate Boulevard
Sacramento, California 95834

Quest Diagnostics Incorporated
1201 South Collegeville Road, CV-3041
Collegeville, PA 19426
Attn: Corporate Real Estate Department

22. **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.

23. **SUCCESSOR:** This Lease shall be binding upon and inure to the benefit of all the heirs, successors and assigns of the parties.

24. **NON-COMPETE:** Lessor shall not lease, permit a sublease, operate, maintain or authorize any person or corporation to operate a Reference Medical Laboratory in the Building. This agreement constitutes an exclusive use to the holder of the Lease. Lessor may permit any physician Lessee in the Building (including any physician employed by a Practitioner (defined in Section 21.7) or Practitioner-Lessor) to perform in-office laboratory testing limited only to his or her own medical patients, provided that such physician’s practice does not consist exclusively or principally of performing only such laboratory testing. **“Reference Medical Laboratory”** means any clinical laboratory, collection station, distribution station or other operation used in connection with testing or obtaining specimens for the purpose of testing human tissue or fluids.

25. **LEGISLATIVE MODIFICATION:** The parties hereto acknowledge that Section 6204 of the Omnibus Budget Reconciliation Act of 1989 (42 USC §1395nn), as amended (hereinafter referred to as the “Stark Law”), prohibits a physician from making a referral to a clinical laboratory (for which referral the Medicare and Medicaid Programs would otherwise pay) if the physician (or a member of the physician’s immediate family) has a financial arrangement with such clinical laboratory. Further, the parties recognize that the self-referral prohibition of the Stark Law, and any regulations so implementing the Stark Law will affect the parties hereto, except to the extent the parties are otherwise specifically exempt from, or outside the scope of, the Stark Law and its regulations. The parties further
acknowledge that the Medicare/Medicaid Anti-Kickback Statute (42 USC 1320a-7(b)) may affect the parties absent compliance with applicable safe harbors.

The parties hereto agree that the terms and conditions of this Lease must at all times comply with the requirements of the Stark Law, the Anti-Kickback Statute and any regulations implementing the Stark Law and/or the Anti-Kickback Statute. If at any time either party fails to so comply with the provisions and exceptions of the Stark Law or applicable safe harbors under the Anti-Kickback Statute, either party may terminate this Lease immediately; provided, however, that the parties shall have five (5) days from the date either party discovers that it has unintentionally violated this provision to conform the Lease with applicable safe harbors under the Anti-Kickback Statute and an applicable exception of the Stark Law. In connection with the forgoing, Lessor represents that it is one of the following:

A. **HOSPITAL OR OTHER HEALTH CARE PROVIDER LESSOR:** Lessor is 1) a Hospital, or other entity that is authorized to order testing and/or employs persons authorized to order testing (“Hospital or Other Health Care Provider”); 2) an entity in which a Hospital or Other Health Care Provider has an ownership or investment interest; or 3) under common control or management with a Hospital or other Health Care Provider.

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

**LESSOR:**

[Signature]

Kevin Cann, Chairman
Mariposa County Board of Supervisors

**LESSEE:**

[Signature]

JH Halbout, President
12/30/19

**ATTEST:**

[Signature]

RENE LAROCHE
Clerk of the Board

**APPROVED AS TO FORM:**

[Signature]

STEVEN W. DAHLEM
County Counsel

Last Revised 12/16/2019
In the image above, we have measured the office space exclusive (solid line) and shared (dashed line area) to Quest Diagnostics. The above sketch page represents the appraiser's measurements of the space.
## Exhibit B
### Compensation

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<th>Period</th>
<th>Rate</th>
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<td>November 1, 2019-December 31, 2020</td>
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<tr>
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