

City of Brisbane

Agenda Report

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: Agreement with County of San Mateo for Animal Control Services

DATE: For Council Meeting on May 16, 2011

City Council Goals:

To provide for effective and efficient delivery of City services [1].

To provide public service that assures the safety of property and citizens residing, working, or visiting in Brisbane [9].

Purpose:

The purpose of the contract is to continue the arrangement for county-wide animal control services provided by the County of San Mateo and the Peninsula Humane Society and SPCA as its contractor.

Recommendation:

Approve Third Amendment to Agreement For Animal Control and Shelter Services between the County of San Mateo and the cities in the County, including Brisbane, and authorize the Mayor to execute the Amendment on behalf of the City.

Background and Discussion:

In 2007, the County of San Mateo and all of the cities in the County executed a Second Amendment to the agreement for animal control and shelter services being provided by the County through the Peninsula Humane Society (PHS) and SPCA as its contractor. The Second Amendment extended the term of the agreement through June 30, 2011. The Third Amendment will further extend the term through June 30, 2015.

The cost of animal control services to the city is dependent upon the extent to which those services are actually used. The total budget is then divided among the County and the Cities and each city is billed for its individual share of the total cost, based upon its

usage of the services. The amount payable to the Peninsula Humane Society by the County for the 2011-2012 fiscal year (the first year of the extended term) will be the same as the 2010-2011 fiscal year. Thereafter, annual increases will be made as set forth in the amendment.

In addition to the cost of animal control services, the Third Amendment also provides for an additional payment to PHS of up to \$50,000 per year for maintenance, repairs and capital improvements to the shelter facilities, which are being leased to the PHS by the County for \$1 per year. However, the PHS must also commit \$400,000 for these purposes during the term of the extended contract. Thus, during the first fiscal year, PHS will receive the \$50,000 only after it has expended \$150,000; during the second and third fiscal years the \$50,000 is paid after PHS has expended \$100,000; and during the fourth fiscal year, the \$50,000 is paid after PHS has expended \$50,000.

The Third Amendment also contains provisions for a partial refund to the County of unexpended contract funds during the final year of the contract.

As in the case of the original agreement and the prior amendments, the proposed Third Amendment must be approved by all of the cities to become effective. Consequently, no individual city is able to make changes to the amendment.

Fiscal Impact:

Based upon information provided to the City by the County, the Administrative Services Director has included \$42,500 in the 2011-2012 budget for animal control services, which includes an estimate of the City's share of the additional \$50,000 annual payment for repairs and improvements to the shelter facility. The exact cost to the City cannot be determined until allocations are made among all of the cities according to their respective usage of the services.

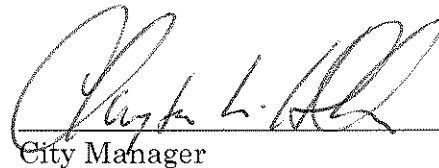
Measure of Success:

Continuation of effective animal control services being provided to the City.

Attachments:

Proposed Third Amendment between the City and the County with attached Third Amendment to Agreement between the County and the Peninsula Humane Society and SPCA.


City Attorney


City Manager

**THIRD AMENDMENT TO AGREEMENT
FOR ANIMAL CONTROL AND SHELTER SERVICES
BETWEEN THE CITIES OF ATHERTON, BELMONT, BRISBANE,
BURLINGAME, COLMA, DALY CITY, EAST PALO ALTO, FOSTER CITY,
HALF MOON BAY, HILLSBOROUGH, MENLO PARK, MILLBRAE,
PACIFICA, PORTOLA VALLEY, REDWOOD CITY, SAN BRUNO, SAN
CARLOS, SAN MATEO, SOUTH SAN FRANCISCO, WOODSIDE AND THE
COUNTY OF SAN MATEO**

This Third Amendment to Agreement For Animal Control Services and Shelter Services, dated for convenience this 26th day of April, 2011 by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California (hereinafter "County"), and the cities or towns of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside (hereinafter "City");

WITNESSETH

WHEREAS, the City has passed and is responsible for enforcing local ordinances governing the regulation, licensing and impounding of certain animals within the territorial limits of the City; and

WHEREAS, on June 17, 2003, County and Peninsula Humane Society & SPCA ("hereinafter "Contractor" or "County Contractor") entered into an Agreement For Animal Control Services and Shelter Services (hereinafter referred to as the "Agreement"); and

WHEREAS, County and City entered into an Agreement on or about July 1, 2003 for Animal Control Services (hereinafter, "City Agreement"); and

WHEREAS, County and City entered into an Amendment on or about December 14, 2004, extending the City Agreement to correspond with an extension of the Agreement and PHS land lease through June 30, 2008 and amending the PHS payment schedule; and

WHEREAS, County and City entered into a Second Amendment on or about April 24, 2007, extending the City Agreement to correspond with the Second Amendment of the Agreement and PHS land lease through June 30, 2011 and amending the PHS payment schedule; and

WHEREAS, County and County Contractor have entered into Third Amendment, extending the Agreement and Land Lease Agreement through June 30, 2015;

WHEREAS, City and County wish to again amend the City Agreement as set forth below to be consistent with the Third Amendment to the Agreement and PHS land lease, which Third Amendment is attached hereto as Exhibit A;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES PROVIDED HEREUNDER, THE PARTIES AGREE TO THE FOLLOWING:

1. Subparagraph 8 **Term and Effective Period** of Section D. **GENERAL PROVISIONS** of the City Agreement, previously deleted and replaced in its entirety in the First Amendment and Second Amendment, is hereby deleted and replaced in its entirety by the following:

“8. **Term and Effective Period.** This Agreement shall be effective the period from July 1, 2011 through June 30, 2015. All services are subject to the terms and conditions of this Agreement.”

2. Subparagraph 4 **Payments** of Section B. **CITY’S RESPONSIBILITIES** of the Services Agreement, previously deleted and replaced in its entirety in the First Amendment and Second Amendment, is hereby further deleted and the following substituted in lieu thereof:

“4. **Payments.**

a. City shall pay to the County prior to January 1st of each fiscal year, and following the receipt of an invoice from County, the City’s percentage share of the net program cost of the Animal Control Program. This net program cost shall be determined by the County and shall be equal to the cost of the contract between the County and County Contractor plus the cost of the County administering licensing collection and Animal Control Services Program, minus any program revenue received by County or County Contractor as described in Section D, Paragraph 5. County and City’s percentage share shall be based on service costs. County will calculate a percentage breakdown annually, based on service reports provided by County Contractor. Percentage distribution for a given year will be based on an average of service costs over the three calendar years prior to the year in question. Exhibit “B”, attached and incorporated by this reference herein, details percentage distribution for FY 2003-04. Percentage distributions for each fiscal year will be distributed by County to City by March 31st.

b. Base costs to be paid to County Contractor by the County and City are as follows, inclusive of the rabies investigation and quarantine services as described in the First Amendment as

“Quarantine Services”, for Fiscal Years 2011-2012, 2012-2013, 2013-2014, and 2014-2015:

<u>Fiscal Year</u>	<u>Amount</u>
2011-12	\$5,236,875
2012-13	\$5,417,797
2013-14	\$5,608,170
2014-15	\$5,944,135

c. City understands and agrees that over the term of the Third Amendment to the Agreement, County’s Contractor may become eligible, pursuant to the criteria set forth in subsection 7f of Section C of the Third Amendment to the Agreement, attached hereto as Exhibit A, for a maximum payment of an additional fifty thousand dollars (\$50,000) per fiscal year from County and City to complete necessary maintenance and repairs to the animal control services building. Therefore, in addition to the base amounts paid to Contractor as set forth above, the County and City will pay to the County Contractor, an additional amount of up to \$50,000 per year, for maintenance and repairs according to the terms of subsection 7 of Section C of the Agreement as set forth in the Third Amendment to the Agreement, attached and incorporated hereto as Exhibit A. The payments by County and City will be determined according to the same formula and percentage distribution as set forth herein in this section B.4.

d. City understands and agrees that County Dispatch will invoice the cost for after-hours/holidays calls for animal control and licensing. These costs will be charged to the program to be paid by County and City according to the same percentage distribution as set forth herein in this section B.4.”

3. Subparagraph 6. **Program Deficit or Surplus** of Section D. **GENERAL PROVISIONS** of the City Agreement is deleted in its entirety, and the following shall be substituted in lieu thereof:

“6. **Program Deficit or Surplus.** City and County shall share in covering any program deficit or receiving any program surplus as set forth herein. City understands and agrees that:

a. For the first three (3) fiscal years covered in this contract, FY 2011-2012, FY 2012-2013, and FY 2013-2014, the County Contractor shall retain one hundred percent (100%) of all unspent contract funds with the written approval of the County and exercise

full authority over the use of its share, if the County determines that the savings by Contractor have not impacted the quality of services detailed in the Agreement.

b. For the final fiscal year of this contract, FY 2014-15, twenty five percent (25%) of all unexpended contract monies, and all contract monies spent for a purpose other than the performance of the services herein contracted, shall be refunded to the County by January 31, 2016. Contractor shall retain seventy five percent (75%) of all unspent contract funds with the written approval of the County and exercise full authority over the use of its share, if the County determines that the savings by Contractor have not impacted the quality of services detailed in the Agreement;

c. Approval from County will follow within 90 days subsequent to County review of an Audit Report, as set forth in the Agreement.

d. County Contractor has agreed not to use these savings to provide services which will add on-going costs to services covered by the Agreement without written County approval.

e. No more than one percent (1%) of the funds paid by County pursuant to the Agreement shall be expended towards the salary and benefits of Contractor's President.

f. Subparagraphs a and b to this Paragraph shall not apply to cost savings resulting from decreased levels of service due to changes in County or State law as provided by paragraph C.6 of the Agreement.”

4. Subparagraph 4 **Monitoring Meetings** of Section D **GENERAL PROVISIONS** of the City Agreement, is hereby deleted and replaced with a new Subparagraph 4 to read as follows:

“4. City/County Monitoring Meetings and City Designated Liaison.

a. Upon the effective date of this Agreement, County shall form a monitoring committee that shall hereafter be referred to as the Animal Control Task Force, which shall consist of police representatives and/or City Manager representatives, and representation from the County. Cities without formal representation or appointment may attend and fully participate in all meetings. The Animal Control Task Force shall remain in effect throughout the term of this Agreement and may adopt its own rules of conduct. Responsibilities of the Animal Control Task Force shall include but not be limited to:

- i. Review existing local animal control ordinances and make recommendations for appropriate changes to the County and Cities.
- ii. Review licensing activities with County representative.
- iii. Review all citation activities.
- iv. Review programmatic complaints of any City and programmatic data provided by County Contractor.
- v. Review revenues and expenditures relating to Animal Control Services.
- vi. Review the Cities' cost sharing formula.
- vii. Review and develop performance measures, in conjunction with County Contractor staff, which will provide valid and reliable data by which to evaluate the level of service being provided by the County Contractor.

b. In addition to the above, three times a year representatives from City, County, and Contractor will meet to participate in discussions regarding long-term options and alternatives for the current animal shelter. The City, County, and Contractor shall set these meetings in advance in an effort to allow full participation.

c. City shall also designate a representative to provide liaison for any animal control and licensing administration or enforcement issues for which County or Contractor requests input from the City. If no contact person is designated, the City contact person shall be the City Manager.

5. Effectiveness of Amendment. Except as expressly and specifically set forth in this Third Amendment, all other provisions of the City Agreement, the First Amendment, and the Second Amendment, shall remain unchanged and in full force and effect.

6. Condition Precedent. If this amendment is not adopted by all twenty cities, it will become null and void in its entirety except that in such an event, the County and any of the cities which are in agreement with the terms and conditions of this Third Amendment may use it as the grounds for considering a revised Third Amendment which may be acceptable to those parties.

IN WITNESS WHEREOF, the Board of Supervisors of the County of San Mateo has authorized and directed the Health System Chief to execute said Agreement

for and on behalf of the County of San Mateo. The Cities of Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, and Woodside have caused this Agreement to be subscribed by its duly authorized officer and attested by its Clerk.

Dated: _____

COUNTY OF SAN MATEO

By: _____

Jean S. Fraser, Chief
Health System

ATTEST:

Dated: _____

TOWN OF ATHERTON

By: _____

Town of Atherton, Clerk

ATTEST:

Dated: _____

CITY OF BELMONT

By: _____

City of Belmont, Clerk

ATTEST:

Dated: _____

CITY OF BRISBANE

City of Brisbane, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF BURLINGAME

City of Burlingame, Clerk

By: _____

ATTEST:

Dated: _____

TOWN OF COLMA

Town of Colma, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF DALY CITY

City of Daly City, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF EAST PALO ALTO

City of East Palo Alto, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF FOSTER CITY

City of Foster City, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF HALF MOON BAY

City of Half Moon Bay, Clerk

By: _____

ATTEST:

Dated: _____

TOWN OF HILLSBOROUGH

Town of Hillsborough, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF MENLO PARK

City of Menlo Park, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF MILLBRAE

City of Millbrae, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF PACIFICA

City of Pacifica, Clerk

By: _____

ATTEST:

Dated: _____

TOWN OF PORTOLA VALLEY

Town of Portola Valley, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF REDWOOD CITY

City of Redwood City, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF SAN BRUNO

City of San Bruno, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF SAN CARLOS

City of San Carlos, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF SAN MATEO

City of San Mateo, Clerk

By: _____

ATTEST:

Dated: _____

CITY OF SOUTH SAN FRANCISCO

City of South San Francisco, Clerk

By: _____

ATTEST:

Dated: _____

TOWN OF WOODSIDE

Town of Woodside, Clerk

By: _____

**THIRD AMENDMENT TO AGREEMENT
FOR ANIMAL CONTROL SERVICES AND SHELTER SERVICES
BETWEEN THE PENINSULA HUMANE SOCIETY & SPCA
AND THE COUNTY OF SAN MATEO**

This Third Amendment to Agreement For Animal Control Services And Shelter Services Between The Peninsula Humane Society & SPCA And The County Of San Mateo, dated for reference purposes only this ____ of _____, 2011, between the Peninsula Humane Society & SPCA, a California nonprofit corporation for the prevention of cruelty to animals (hereinafter, "PHS/SPCA" or "Contractor") and the County of San Mateo, a political subdivision of the State of California (hereinafter, "County").

WITNESSETH

WHEREAS, County and PHS/SPCA (collectively hereinafter, "Parties") entered into the written Agreement For Animal Control Services And Shelter Services Between The Peninsula Humane Society & SPCA And The County Of San Mateo, dated June 2003, in which PHS/SPCA agreed to perform and County agreed to compensate PHS/SPCA for performance of certain specified animal care, control and shelter services (hereinafter, "Services Agreement");

WHEREAS, said Services Agreement was originally scheduled to terminate as of July 1, 2006;

WHEREAS, County and PHS/SPCA also entered into a written Lease Agreement dated October 12, 1971, as amended (hereinafter, "Lease Agreement") in which County leased to PHS/SPCA and PHS/SPCA leased from County certain premises located at 12 Airport Boulevard in the City of San Mateo containing approximately 8.766 acres, more or less, at the rental rate of one dollar (\$1.00) per annum for an initial period of four (4) years, ending August 31, 1975, and renewable at the option of PHS/SPCA for three (3) successive periods of twenty-five (25) years each upon written notice to County, for use and occupation by PHS/SPCA in carrying out the animal care, control and shelter services specified in the Services Agreement and any other humane-related services provided in connection with the prevention of cruelty to

animals within the meaning of Section 501(c)(3) of the Internal Revenue Code and under laws of the State of California;

WHEREAS, on or about or about August 17, 1976, County and PHS/SPCA entered into an amendment of the October 12, 1971 Lease Agreement whereby PHS/SPCA relinquished a portion of the leased area (identified as Parcel B on Exhibit A) and the County added to the leased area a portion (identified as Parcel C on Exhibit A), such that the Amended Lease Agreement encompassed a lease of approximately six (6) acres of County real property;

WHEREAS, on or about August 12, 2003, County sent written notice to PHS/SPCA terminating Parties' Lease Agreement early as of August 12, 2006, pursuant to Section 18(b) of the Lease Agreement (hereinafter, "Lease Termination Notice");

WHEREAS, on or about December 14, 2004, Parties entered into a First Amendment To Agreement For Animal Control Services And Shelter Services Between Peninsula Humane Society & SPCA And The County of San Mateo (hereinafter, "First Amendment") for the purpose of amending and extending the term of the Services Agreement and extending the term of the Lease Agreement by a period of approximately two (2) additional years, ending June 30, 2008;

WHEREAS, on or about April 24, 2007, Parties entered into a Second Amendment To Agreement For Animal Control Services And Shelter Services Between Peninsula Humane Society & SPCA And The County of San Mateo (hereinafter, "Second Amendment") for the purpose of amending and extending the term of the Services Agreement and extending the term of the Lease Agreement by a period of approximately three (3) additional years, ending June 30, 2011;

WHEREAS, Parties desire to extend the term of the Services Agreement, as amended herein, as well as the Lease Agreement, by a period of approximately four (4) additional years, ending June 30, 2015;

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES PROVIDED HEREUNDER, THE PARTIES AGREE AS FOLLOWS:

1. **Four-Year Extension.** Section D.1 of the Services Agreement, previously deleted and replaced in its entirety in the First Amendment and Second Amendment, is hereby deleted and replaced in its entirety by the following:

“1. Term of the Agreement to Coincide with Property Lease Termination.

- a) This Agreement shall be effective the period from July 1, 2011 through June 30, 2015. All services are subject to the terms and conditions of this Agreement.
- b) To enable Contractor to perform the services contemplated by this Agreement for the entire term, Parties hereby agree that Contractor’s leasehold of the premises subject to Parties’ Lease Agreement and the Lease Termination Notice shall extend through June 30, 2015, at the rental rate of one dollar (\$1.00) per annum.”

2. **Payment Amounts and Schedule.** Section C.1. of the Services Agreement, as amended in the First Amendment and Second Amendment, shall be further amended to include the amounts as set forth below to cover all services, inclusive of the rabies investigation and quarantine services as described in the First Amendment as “Quarantine Services”, for Fiscal Years 2011-12, 2012-13, 2013-14, and 2014-15.

<u>Fiscal Year</u>	<u>Amount</u>
2011-12	\$5,236,875
2012-13	\$5,417,797
2013-14	\$5,608,170
2014-15	\$5,944,135

All other provisions of this Section shall remain in full force effective as amended in the First Amendment and Second Amendment.

3. **Use of Contract Revenue.** Section C.3 of the Services Agreement is deleted in its entirety, and the following shall be substituted in lieu thereof:

“Contractor agrees that all funds paid by County to Contractor pursuant to this Agreement will only be used by the Contractor to meet its obligations herein.

- a. For the first three (3) fiscal years covered in this contract, FY 2011-2012, FY 2012-2013, and FY 2013-2014, Contractor shall retain one hundred percent (100%) of all unspent contract funds with the written approval of the County and exercise full authority over the use of its share, if the County determines that the savings by Contractor have not impacted the quality of services detailed in this contract.
- b. For the final fiscal year of this contract, FY 2014-15, twenty five percent (25%) of all unexpended contract monies, and all contract monies spent for a purpose other than the performance of the services herein contracted, shall be refunded to the County by January 31, 2016. Contractor shall retain seventy five percent (75%) of all unspent contract funds with the written approval of the County and exercise full authority over the use of its share, if the County determines that the savings by Contractor have not impacted the quality of services detailed in this contract;
- c. Approval from County will follow within 90 days subsequent to County review of a mutually acceptable Audit Report, defined in Section C.4. of this Agreement.
- d. Contractor agrees not to use these savings to provide services which will add on-going costs to services covered by this Agreement without written County approval.
- e. No more than one percent (1%) of the funds paid by County pursuant to this Agreement shall be expended towards the salary and benefits of Contractor’s President.
- f. Subparagraphs a and b to this Paragraph 3 shall not apply to cost savings resulting from decreased levels of service due to changes in County or State law as provided by paragraph C.6 of this Agreement.”

4. **Audit Requirements and Records.** Section C.4. of the Services Agreement shall be amended by adding the following provision to the end of the paragraph:

“The completed audit covering the previous fiscal year will be provided to the County by December 31st of each calendar year.”

5. **Maintenance and Repairs.** Section C of the Services Agreement is amended to include a new subsection 7:

“7. Maintenance and Repairs.

- a. The Parties acknowledge that the County has prepared a Maintenance & Repair survey of conditions and deferred maintenance and repairs of the portion of the PHS/SPCA facilities used for contracted animal control services, located at 12 Airport Blvd. in San Mateo, which document is attached and incorporated herein as Attachment 1 (“Survey”).
- b. Upon the effective date of this Third Amendment to the Services Agreement, Contractor agrees to commit funds received by Contractor for services rendered under the Services Agreement as described in Section C.1 herein, in an amount of up to \$400,000, which amount shall be designated as the “Contractor’s Capital Repair Fund”. Contractor will expend, over the term of the Third Amendment to the Services Agreement, a part or all of this Contractor’s Capital Repair Fund to accomplish those Survey repairs, limited to the areas of the facility that are used for contracted animal control services, which it determines are necessary for the safe and effective operation of the PHS/SPCA facility located at 12 Airport Boulevard in the City of San Mateo. While the Capital Repair Fund is primarily to be used for Survey repairs, Contractor may use such funds for general maintenance of the buildings that are used to provide contracted animal control services. Expenditures on Survey work shall be the first priority. The Contractor’s Capital Repair Fund shall be noted as a separate line item in the annual audit. Any and all such repairs and maintenance for which the Contractor’s Capital Repair Fund is

used are limited to the portions of the building that are used to provide contracted animal control services to County and Cities.

- c. Except for the additional funds referenced in subsection f of this Section 7, which must be used as agreed by the parties, Contractor will not be required by this amendment to use any additional contract funds in excess of Contractor's Capital Repair Fund over the term of this Third Amendment to the Services Agreement, nor is Contractor committed to exhausting the entire fund; and any unexpended amounts left in the fund remain the Contractor's.
- d. Contractor shall have discretion regarding timing of the execution of Survey work, to insure that any such work does not impact its abilities to house and care for animals in a way Contractor finds acceptable.
- e. The funds expended by Contractor from the Contractor's Capital Repair Fund pursuant to this section shall be used to correct conditions described in the Survey which constitute health or safety hazards as determined by Contractor. Contractor may also use the funds to correct other deferred maintenance and repairs as described in the Survey, and additional repairs and maintenance as needed. Survey work shall take priority over additional repairs and maintenance.
- f. Over the term of the Third Amendment to the Services Agreement, Contractor may become eligible, pursuant to the criteria set forth in this Section 7f, for a maximum of an additional fifty thousand dollars (\$50,000) per fiscal year from County to complete additional necessary maintenance and repairs, in addition to those described by the Survey, in the portions of the facility used for contracted animal control services provided to County and Cities. These funds will be held by County in a fund designated as "County Repair/Maintenance Fund" and shall be noted as a separate line item in the annual audit. No such annual funds shall be paid to Contractor in the first fiscal year unless Contractor has expended a minimum of \$150,000 on deferred repairs and maintenance as described in the Survey or other repairs

and maintenance. Survey work shall be the first priority for use of the funds until such work is completed. In the second and third fiscal years, Contractor shall become eligible for an additional \$50,000 per fiscal year after Contractor has expended, in each fiscal year, at least \$100,000 on repairs and maintenance, making Survey work the first priority. In the fourth and final fiscal year, after Contractor has expended the remaining \$50,000 from the Contractor's Capital Repair Fund, Contractor shall become eligible for the remaining amount of up to \$50,000 from the County Repairs/Maintenance Fund. If Contractor expends funds in excess of its annual minimum in any one fiscal year, such excess amount shall be credited toward the minimum expenditures for the following fiscal year(s) during the term of the Third Amendment to the Services Agreement. Any unused County funds of up to \$50,000 per year will be held by County in the County Repair/Maintenance Fund until such time as Contractor meets the respective expenditure requirements. Any banked funds left over from prior fiscal year(s) may be used by Contractor for maintenance and repairs after minimum expenditure requirements have been met by Contractor. The parties understand that all unexpended funds in the County Repair/Maintenance Fund at the expiration of the term of this Amendment, will be redistributed by County to County and Cities as appropriate. Each repair or maintenance item contained in the annual report is to be submitted with documentation as to the amount of funds actually expended for such item. Once the allotment becomes available, County agrees not to deny any reasonable repair/maintenance projects and expenditures kept within the \$50,000 per year allotment. All repairs and maintenance performed or caused to be performed by Contractor pursuant to this Section 7 shall be completed in compliance with applicable building codes after obtaining any required permits.

- g. Any and all repairs and maintenance completed to the portions of the building that are used to provide contracted animal control services and for which either the Contractor's Capital Repair Fund or the County Repair/Maintenance Fund is used shall be itemized in an annual report to be submitted annually by

the Contractor to the County or to a group designated by the County and City Managers of the Cities.

- h. In the unlikely event of an emergency safety related repair needed to the portions of the PHS/SPCA facility located at 12 Airport Boulevard in the City of San Mateo that are used to provide contracted animal control services, in excess of the Contractor's Capital Repair Fund and the annual funds contained in the County's Repair/Maintenance Fund and which arises after all such funds have been expended, County and Contractor shall timely meet in good faith to jointly determine which maintenance or repairs are required and whether or not such repair work shall be undertaken.

- 6. **Options for Animal Control Shelter.** Section C of the Services Agreement is amended to include new subsection 8:

"8. Options for Animal Control Shelter.

"Three times a year, representatives from Parties and Cities will meet to participate in discussions regarding long-term options and alternatives for the current shelter. The Parties and Cities shall set these meetings in advance in an effort to allow full participation."

- 7. **Field enforcement Staffing and Services.** Exhibit B, Section 2a shall be amended to add a subsection 6:

"6) When there is a reasonable belief of a person's or an animal's exposure to rabies, Contractor will immediately notify Public Health personnel, 650.573.2346 Monday-Friday 8am-5pm and 650.363.4981 after-hours/holidays."

- 8. **Effectiveness of Amendment.** Except as expressly and specifically set forth in this Third Amendment, all other provisions of the Services Agreement, the First Amendment, and the Second Amendment, the Lease Agreement and the Lease Termination Notice shall remain unchanged and in full force and effect.
- 9. **Condition Precedent.** This Third Amendment will become effective only after the County and the 20 Cities within the County negotiate and adopt amendments to their

June 17, 2003 Agreement that are consistent with this Third Amendment. If such amendments are not adopted by all twenty Cities, this Amendment is null and void in its entirety except that in such an event, PHS/SPCA, the County and any of the Cities which are in agreement with the terms and conditions of this Third Amendment shall use it as the grounds for considering a revised Third Amendment which may be acceptable to those parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to Agreement For Animal Control Services And Shelter Services Between The Peninsula Humane Society & SPCA And The County Of San Mateo to be executed by their duly authorized representatives on the day and year first written above.

Dated: _____

COUNTY OF SAN MATEO

By _____

Jean Fraser
Chief, Health System

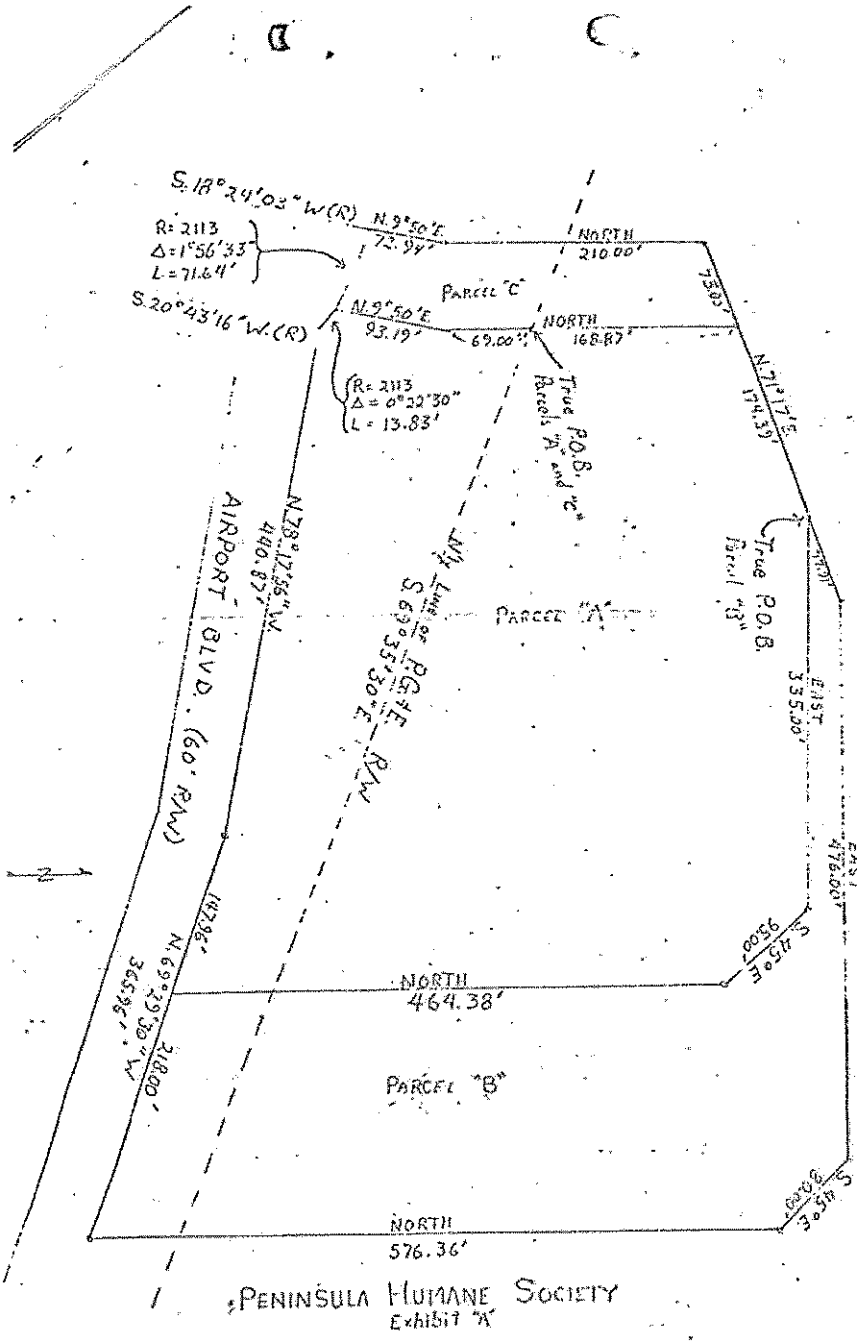
Dated: _____

PENINSULA HUMANE SOCIETY & SPCA

By _____

Ken White
President

EXHIBIT A



Peninsula Humane Society Building Deficiencies Survey: April 8, 2011

Consideration taken into account for occupancy of 5 to 8 years maximum.

1. Outside Drainage:

Although it was not raining, nor, had it rained for several days prior to our walkthrough, large amounts of standing water were evident. I was informed that the parking lot and rear of the building flood frequently during storms, and, that the surface drains did not work. It was also noted that the County Parks Dept. would not allow clean out service to be performed where the storm drains 'Day Light' to the bay. During the outside inspection, it was also obvious that the grade sloped toward the building structure causing flooding into the facility.

2. Exterior Siding and Paint:

Structurally, the exterior siding of the building will hold up for the occupancy requirement with minimum repairs. Unfortunately, it would still remain cosmetically unappealing in some areas.

The exterior siding and trim will, however, need to be painted in order to last without failure for next 5 to 8 years.

3. Roof:

Approximately 70% of the flat roof areas appear to be original from when constructed. I would recommend a roofing consultant be contacted to inspect these areas to determine if the roof will last 5 to 8 years. The other 30% of the flat roof is new within the last 5 years and will not require replacement, particularly over the Spay/Neuter area. The pitch roof areas are composition shingles and appear to be satisfactory, however, there is a major leak under a pitch roof/clear story area that will need to be found and repaired.

4. Life Safety System:

I was advised by Ken White that the Fire Alarm system was compliant per the Fire Marshall, however, I would advise reconfirmation.

5. ADA:

Entire facility - Not Compliant i.e. Manual front doors, restrooms not sufficient size, etc.

6. Electrical Panels:

The electrical panels are old and not looking good. I was advised that there are major electrical circuit deficiencies. The last Preventative Maintenance service tag I could find was performed in 2000. NOTE: I am not qualified to inspect or determine the condition of electrical panels. This inspection should be performed by a qualified technician. At minimum, panel maintenance should be performed – clean, tighten and scan. Panel covers should also be checked for proper installation.

7. Exterior Trellis at South/West Corner of Facility:

The trellis is in a state of failure and poses a safety threat if not repaired. If trellis is to be saved, the trees must be cut back first to assess damage. Seismic hardware, rotted framing member's replacement and paint would be required. Removal of trellis is another option.

8. Exterior Doors:

There are approximately (15) doors throughout the facility that require replacement.

Building mechanical systems survey to be performed by our Engineering staff.

Patrick Oliver

Craft Maintenance Supervisor

County of San Mateo

Dept. of Public Works

Facilities Maintenance and Operations.

Office – 650-363-1877

poliver@co.sanmateo.ca.us