RESOLUTION NO. 073369

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION TO APPROVE THE MEMORANDUM OF AGREEMENT WITH ALL CITIES IN SAN MATEO COUNTY TO CONSTRUCT A NEW ANIMAL CARE SHELTER AT AIRPORT BOULEVARD IN THE CITY OF SAN MATEO AND TO PROVIDE A 30-YEAR LEASE AGREEMENT FOR THE USE OF THE SHELTER BY ALL CITIES AND THE COUNTY.

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, Health & Safety Code Section 121690 requires the governing body of each city and county to maintain or provide for the maintenance of a pound system and a rabies control program; and

WHEREAS, Food and Agricultural Code Section 31106 provides for the County authority to enter into a contract with any humane society or other organization to carry out the provisions of impounding, holding, and euthanizing dogs; and

WHEREAS, since 1951 all of the municipalities in San Mateo County have contracted with the County to manage animal control field and sheltering services, provided through a contract with the Peninsula Humane Society & SPCA (PHS) for the field and sheltering services; and

WHEREAS, animal sheltering services are currently provided in a building owned by PHS and located on County property at Airport Boulevard in the City of San Mateo, which PHS leases for a nominal fee; and
WHEREAS, the current shelter is over 50 years old and has been determined by
the Department of Public Works to be inadequate to meet current animal sheltering
standards, and that it is not viable to significantly repair or upgrade the shelter; and

WHEREAS, building a new animal care shelter at an estimated cost of $20
million was included in the Five Year Facilities Capital Plan presented to your Board on
August 6, 2013; and

WHEREAS, the County will serve as the lead agency in managing the
construction of a new building, and once built would be the sole owner of the building;
and

WHEREAS, as of May 6, 2014, all municipalities agreed to share the
construction costs for a new animal care shelter by repaying the County through a 30-
year, interest-free lease agreement; and

WHEREAS, the County is willing to advance the funding for construction and
participate in the lease as a partner with the Cities, but there will be no additional fiscal
impact to the County.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the
President of this Board of Supervisors is hereby authorized and directed to authorize
the President of the Board to execute the Memorandum of Agreement for and on behalf
of the County of San Mateo, and the Clerk of this Board shall attest the President's
signature thereto.

* * * * *
RESOLUTION NUMBER: 073369

Regularly passed and adopted this 9th day of September 2014

AYES and in favor of said resolution:

Supervisors:

Dave Pine

Carole Groom

Don Horsley

Warren Slocum

Adrienne J. Tissier

NOES and against said resolution:

Supervisors:

None

Absent Supervisors:

None

[Signature]
President, Board of Supervisors
County of San Mateo
State of California

Certificate of Delivery

I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

[Signature]
Rebecca Romero, Deputy
Clerk of the Board of Supervisors
ATTACHMENT A

MEMORANDUM OF AGREEMENT

REGARDING FUNDING FOR CONSTRUCTION OF AN ANIMAL CARE SHELTER ON AIRPORT BOULEVARD IN SAN MATEO, CALIFORNIA, AMONG THE CITIES OF AHERTON, 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 AND THE COUNTY OF SAN MATEO

THIS MEMORANDUM OF AGREEMENT, dated for reference as of September 9, 2014, (the "Agreement"), is by and among the COUNTY OF SAN MATEO (the "County"), and the cities of AHERTON, 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 (each, a “City,” and collectively, the “Cities,” and, together with the County, the “Parties”).

RECITALS

The County and the Cities are parties to an Agreement for Animal Control Services dated as of April 26, 2011, pursuant to which the County provides animal control services in the unincorporated area of the County, as well as in the jurisdictional boundaries of the twenty Cities within the County, listed above, each of which is a party to the Agreement for Animal Control Services.

As set forth in the Agreement for Animal Control Services, the Peninsula Humane Society & SPCA ("PHS") presently serves as the County Contractor for the provision of certain animal control services to the County and the Cities. These services and the terms of PHS’ performance of them are contained in an Animal Control Services Agreement between the County and PHS dated as of April 26, 2011.

In conjunction with and pursuant to the Animal Control Services Agreement, the County has leased to the PHS the land at 12 Airport Boulevard, in San Mateo, California, on which an Animal Care Shelter facility owned and operated by PHS is presently located.

The Parties agree that, owing to the obsolescence of the existing Animal Care Shelter facility, it is now necessary to construct a new facility and the Parties enter into this Agreement to set forth
the allocation of, and process for payment of, the construction cost for the new Animal Care Shelter facility among the Parties.

NOW, THEREFORE, the Parties agree as follows:

1. Construction Cost Allocation Methodology: The Parties agree that construction costs for the new Animal Care Shelter facility shall be allocated among the Parties based on the formula set forth in Exhibit A to this Agreement, which is incorporated herein by reference. This formula reflects each Party’s actual use of the existing Animal Care Shelter facility in 2009, 2010, and 2011 as a percentage of all Parties’ total use of the facility, as well as each Party’s total population as of 2010, as a percentage of the County’s total population as of that date. The formula is weighted 80% to a City’s average facility use over the three years preceding the year in question and 20% to population. The Parties agree that each year, the County shall recalculate three year average facility usage for each City and that Exhibit A (and each Party’s prospective Lease Payment obligations, as described in Section 3 of this Agreement) shall be amended to reflect such recalculations. The Parties further agree that the County shall, upon request of a City, promptly provide the requesting City with copies of the data and documents used to calculate each City’s facilities usage.

2. County Advancing Construction Costs: The Parties agree that the County shall advance, on an interest free basis, all funds required to pay the construction costs for the new Animal Care Shelter facility. For purposes of this Agreement, “construction costs” include all expenses for architectural and inspector services, project management service, environmental review, planning and building fees and costs, and actual contractor construction services. The Parties understand and agree that construction costs for the Animal Care Shelter facility are anticipated at this time to be twenty million two hundred thousand dollars ($20,200,000). The Parties will be provided with further information regarding the construction costs for the Animal Care Shelter facility within a reasonable period of time after such information becomes available or prior to the Certificate of Occupancy being issued. The Parties agree that if the County receives information indicating that the construction costs for the Animal Care Shelter facility will exceed $20,200,000 by 10% or more, the County shall provide notice to each City of the revised estimated construction costs within a reasonable period of time before such additional construction costs are incurred. The Parties further agree that the County shall, upon request of a City, promptly confer with such City or Cities regarding the additional construction costs and any means by which such additional construction costs may be minimized.

3. Parties’ Payment of Proportional Share of Construction Costs: Each Party agrees that, during the term of this Agreement for as long as the new Animal Care Shelter facility is occupied and used for animal care shelter purposes, the Party shall pay the County an annual Lease Payment beginning on the first July 1st after a certificate of occupancy is issued for the new Animal Care Shelter facility, and on each subsequent July 1st for the next twenty nine years thereafter. Each Party’s Lease Payment shall be equal to the Party’s proportional share of the construction cost of the new Animal Care Shelter facility amortized on a straight line basis over thirty years, as set
forth in Exhibit A to this Agreement, as Exhibit A may be amended from time to time as provided in Section 1 of this Agreement. Each Party’s obligation to make a Lease Payment shall remain in place only for so long as the Party is a signatory to the Agreement for Animal Control Services, or any successor agreement addressing materially the same subject matter. In the event that a Party terminates its participation in this Agreement pursuant to Section 4 of this Agreement, the County shall, upon receiving notice of that Party’s termination, recalculate the remaining Parties’ Lease Payment obligations pursuant to the Construction Cost Allocation Methodology set forth in Section 1 of this Agreement. The County shall promptly provide all remaining Parties with notice of their recalculated Lease Payment obligations. Each remaining Party shall thereafter have the option to either (a) pay the recalculated increased annual Lease Payments during the remaining term of the Agreement; or (b) request that the County allow the remaining Party a period of up to 5 years after the end of the thirty year period set forth in this Section 3 of the Agreement to pay the County the remaining Party’s additional allocated share of construction costs for the Animal Care Facility attributable to the departure of the terminating Party.

4. Term and Termination: Except as set forth above, this Agreement shall be effective for the period from September 9, 2014 until each Party has made the last payment required under Section 3 of this Agreement. Except as set forth in Section 3 of the Agreement (i.e., by terminating participation in the Agreement for Animal Control Services), no Party may terminate this Agreement during its term. A Party terminating its participation in this Agreement shall do so effective as of December 31 of a year during the term of this Agreement and shall provide each other Party to this Agreement with at least one full year’s prior written notice of the Party’s intent to terminate its participation in the Agreement.

5. Amendments/Entire Agreement: Amendments to this Agreement must be in writing and approved by the governing body of each Party. This is the entire agreement among the parties with respect to the construction of the new Animal Care Shelter facility and it supersedes any prior written or oral agreements with respect to the subject.

6. Hold Harmless: Each City shall hold harmless, indemnify, and defend County, its officers, employees, and agents from and against any and all claims, suits, or actions of every kind brought for or on account of injuries to or death of any person or damage to any property of any kind whatsoever and to whomsoever belonging which arise out of the performance or nonperformance of City’s covenants and obligations under this Agreement and which result from the actively negligent or wrongful acts of City or its officers, employees, or agents.

County shall hold harmless, indemnify, and defend each City, its officers, employees, and agents from and against any and all claims, suits, or actions of every kind brought for or on account of injuries to or death of any person or damage to any property of any kind whatsoever and to whomsoever belonging which arise out of the performance or nonperformance of County’s covenants and obligations under this Agreement and which result from the actively negligent or wrongful acts of County or its officers, employees, or agents.
This provision requiring County to hold harmless, indemnify, and defend each City shall expressly not apply to claims, losses, liabilities, or damages arising from actions or omissions, negligent or otherwise, of PHS or any other independent contractor providing animal control-related services pursuant to a contract with the County. Claims related to the planning and/or construction of the new Animal Care Shelter facility are not claims, losses, liabilities, or damages related to "animal control-related services" within the meaning of this Agreement.

In the event of concurrent negligence of the County, its officers, or employees, and any City, its officers and employees, then the liability for any and all claims for injuries or damages to persons and/or property or any other loss or cost which arises out of the terms, conditions, covenants or responsibilities of this Agreement shall be apportioned in any dispute or litigation according to the California theory of comparative negligence.

7. Assignability: Except as otherwise expressly provided for herein, no Party shall assign any of its obligations or rights hereunder without the consent of all other Parties.

8. Notices: Any notices required to be given pursuant to this Agreement shall be given in writing and shall be mailed to all Parties to the Agreement, as follows:

To City:

To County:

IN WITNESS WHEREOF, the Board of Supervisors of the COUNTY OF SAN MATEO has authorized and directed the President of the Board of Supervisors to execute this Agreement for and on behalf of the County, and 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 each of their duly authorized officers and attested by their Clerks.

Dated: September 9, 2014

Clerk of the Board

Resolution #073369
Dated: _______________  
__________________________________
Clerk of the Board

Dated: 2-24-12  
[Signature]
Town Clerk

Dated: _______________  
__________________________________
City Clerk

Dated: _______________  
__________________________________
City Clerk

Dated: _______________  
__________________________________
City Clerk

Dated:  
__________________________________
City Clerk

COUNTY OF SAN MATEO

TOWN OF ATHERTON

By: [Signature]  
[Name]
City Manager

CITY OF BELMONT

By:  

CITY OF BRISBANE

By:  

CITY OF BURLINGAME

By:  

TOWN OF COLMA


Dated:  

_____________________

Town Clerk

Dated: 10/23/14

_____________________

City Clerk

Dated:  

_____________________

City Clerk

Dated:  

_____________________

City Clerk

Dated:  

_____________________

City Clerk

TOWN OF ATHERTON

_____________________

By:

CITY OF BELMONT

_____________________

By:

CITY OF BRISBANE

_____________________

By:

CITY OF BURLINGAME

_____________________

By:

TOWN OF COLMA

_____________________

By:

CITY OF DALY CITY

_____________________

By:
Clerk of the Board

Dated: ________________

_____________________
Town Clerk

Dated: ________________

_____________________
City Clerk

Dated: 3/3/14

_____________________
City Clerk

TOWN OF ATHERTON

By: ____________________

_____________________
CITY OF BELMONT

By: ____________________

_____________________
CITY OF BRISBANE

By: W. Clarke Conway, Mayor

_____________________
CITY OF BURLINGAME

By: ____________________

_____________________
TOWN OF COLMA

By: ____________________
Clerk of the Board

Dated: ______________________

__________________________
Town Clerk

Dated: ______________________

__________________________
City Clerk

Dated: ______________________

__________________________
City Clerk

Dated: 3-17-14

__________________________
City Clerk

Dated: ______________________

__________________________
Town Clerk

TOWN OF ATHERTON

__________________________
By:

CITY OF BELMONT

__________________________
By:

CITY OF BRISBANE

__________________________
By:

CITY OF BURLINGAME

__________________________
By:

TOWN OF COLMA

__________________________
By:
Clerk of the Board

Dated: ________________

____________________
Town Clerk

Dated: ________________

____________________
City Clerk

Dated: ________________

____________________
City Clerk

Dated: 3/12/14

____________________
Town Clerk

____________________
TOWN OF ATHERTON

By:

____________________
CITY OF BELMONT

By:

____________________
CITY OF BRISBANE

By:

____________________
CITY OF BURLINGAME

By:

____________________
TOWN OF COLMA

By:
Town Clerk

Dated: May 16, 2014

City Clerk

Dated: ____________________________

City Clerk

Dated: ____________________________

City Clerk

Dated: ____________________________

City Clerk

Dated: ____________________________

Town Clerk

Dated: ____________________________

City of Daly City

By:

City of East Palo Alto

By:

City of Foster City

By:

City of Half Moon Bay

By:

Town of Hillsborough

By:

City of Menlo Park
Dated: ____________

________________________

City Clerk

Dated: 4-28-14

________________________

City Clerk

CITY OF DALY CITY

________________________

By:

________________________

CITY OF EAST PALO ALTO

________________________

By:

CITY OF FOSTER CITY

________________________

By:

CITY OF HALF MOON BAY

________________________

By:

TOWN OF HILLSBOROUGH

________________________

By:

CITY OF MENLO PARK

________________________

By:
Dated: ________________

______________________

City Clerk

Dated: ________________

______________________

City Clerk

Dated: 3/10/14

______________________

Doris L. Palmer
City Clerk

CITY OF DALY CITY

______________________

By:

CITY OF EAST PALO ALTO

______________________

By:

CITY OF FOSTER CITY

______________________

By:

CITY OF HALF MOON BAY

______________________

By:

TOWN OF HILLSBOROUGH

______________________

By:

CITY OF MENLO PARK

______________________

By:
City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________

City Clerk

Dated: ____________
Dated: 

City Clerk

Dated: 

City Clerk

Dated: 5/1/14

Town Clerk

Dated: 

City Clerk

CITY OF DALY CITY

By: 

CITY OF EAST PALO ALTO

By: 

CITY OF FOSTER CITY

By: 

CITY OF HALF MOON BAY

By: 

TOWN OF HILLSBOROUGH

By: 

CITY OF MENLO PARK

By:
Dated: 


CITY OF DALY CITY

By:

Dated: 


CITY OF EAST PALO ALTO

By:

Dated: 


CITY OF FOSTER CITY

By:

Dated: 


CITY OF HALF MOON BAY

By:

Dated: 


TOWN OF HILLSBOROUGH

By:

Dated: 


CITY OF MENLO PARK

By: Alex D. McIntyre
City Manager
Dated: 

CITY OF EAST PALO ALTO

By:

CITY OF FOSTER CITY

By:

CITY OF HALF MOON BAY

By:

TOWN OF HILLSBOROUGH

By:

CITY OF MENLO PARK

By:

Dated: 4/8/14

CITY OF MILLBRAE

By: Mayor

City Clerk
Dated: ________________

City Clerk

CITY OF MILLBRAE

By:

CITY OF PACIFICA

By:

Dated: May 13, 2014

Town Clerk

TOWN OF PORTOLA VALLEY

By:

Dated: ________________

City Clerk

CITY OF REDWOOD CITY

By:

Dated: ________________

City Clerk

CITY OF SAN BRUNO

By:

Dated: ________________

City Clerk

CITY OF SAN CARLOS

By:
Dated: ________________

____________________________________

Town Clerk

Dated: ________________

____________________________________

City Clerk

Dated: ________________

____________________________________

City Clerk

Dated: ________________

____________________________________

City Clerk

Dated: ________________

____________________________________

Town Clerk

Dated: 03/28/14

____________________________________

City Clerk

TOWN OF HILLSBOROUGH

____________________________________

By:

CITY OF MENLO PARK

____________________________________

By:

CITY OF MILLBRAE

____________________________________

By:

CITY OF PACIFICA

____________________________________

By:

TOWN OF PORTOLA VALLEY

____________________________________

By:

CITY OF REDWOOD CITY

____________________________________

By:
Dated: ____________________________

______________________________
City Clerk

Dated: ____________________________

______________________________
City Clerk

Dated: ____________________________

______________________________
City Clerk

Dated: May 15, 2014

______________________________
City Clerk

CITY OF MILLBRAE

______________________________
By:

CITY OF PACIFICA

______________________________
By:

TOWN OF PORTOLA VALLEY

______________________________
By:

CITY OF REDWOOD CITY

______________________________
By:

CITY OF SAN BRUNO

Constance C. Jackson
City Manager

______________________________
By: Constance C. Jackson
City Manager

CITY OF SAN CARLOS

______________________________
By:
Dated: ________________

City Clerk

CITY OF MILLBRAE

By:

Dated: ________________

City Clerk

CITY OF PACIFICA

By:

Dated: ________________

City Clerk

TOWN OF PORTOLA VALLEY

By:

Dated: ________________

City Clerk

CITY OF REDWOOD CITY

By:

Dated: ________________

City Clerk

CITY OF SAN BRUNO

By:

Dated: 5-5-14

City Clerk

CITY OF SAN CARLOS

By:
Dated: 5/16/14
City Clerk

CITY OF SAN MATEO
By: Robert Ross, Mayor

CITY OF SOUTH SAN FRANCISCO
By:

TOWN OF WOODSIDE
By:
CITY OF SOUTH SAN FRANCISCO

Approved as to form

By: MIKE FARRELL
City Manager

City Attorney

TOWN OF WOODSIDE

By:
Dated: _____________

__________________________
City Clerk

Dated: _____________

__________________________
City Clerk

Dated: March 21, 2014

__________________________
City Clerk

CITY OF SAN MATEO

__________________________
By:

CITY OF SOUTH SAN FRANCISCO

__________________________
By:

TOWN OF WOODSIDE

__________________________
By: Mayor