



Item No. 11 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGEMDA

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GEORGE RODERICKS, CITY MANAGER

DATE: FEBRUARY 19, 2014

**SUBJECT: APPROVAL OF THE ANIMAL CARE SHELTER
FUNDING AGREEMENT**

RECOMMENDATION

Approve the attached Memorandum of Agreement for Funding Construction of an Animal Care Shelter as part of the Animal Control Services Agreement and authorize the Mayor to execute the Agreement on behalf of the Town.

BACKGROUND

Since 1952, San Mateo County has contracted with the Peninsula Humane Society (PHS) for animal control field and sheltering service. All twenty cities in the County, including the Town of Atherton, have in turn contracted with the County for these services. Under this contract, all 21 agencies (20 cities and the County) share the cost of services based on a formula that factors agencies' proportionate use of field services and shelter services.

Animal Control services are provided by PHS in a 45,000 square foot building at 12 Airport Boulevard in San Mateo. PHS currently owns the building and the County owns the land. PHS leases the land from the County at a nominal rate. In 2011, PHS moved its charitable, mission-driven functions, such as animal adoption, from the Airport Boulevard shelter to its recently constructed 57,000 square foot building on Rollins Road in Burlingame.

The mandated animal control services functions remain at the Airport Boulevard shelter. Those functions include: receiving and housing stray animals; servicing as the location for the public when looking for lost pets or surrendering unwanted animals; sheltering animals; spay/neuter clinic; and, vaccination clinic. For public convenience, licensing, micro-chipping, veterinary care and animal behavior work are performed at both locations.

Due to its age, the existing shelter is in need of significant repairs. Under the terms of the current agreement all jurisdictions have agreed to share in the cost necessary maintenance and repairs to

the Airport shelter up to \$50,000 per year. However, given the life of the building and the magnitude of repairs need, basic annual maintenance is no longer a viable alternative.

Further, PHS leadership has stated that it will be reluctant to renew the agreement with the County and cities when it expires in 2015 if the new agreement does not include a plan to address the current condition of the Airport Boulevard shelter.

FINDINGS

The San Mateo County Department of Public Works conducted inspections of the Airport Boulevard shelter in 2009 and 2011. Because of the nature of the comprehensive repairs that would be required to bring the facility up to current animal control facility standards, it was determined that the building was functionally obsolete and that substantial renovation of the existing facility is not a viable option.

Working with a Committee of member agencies, the County began to explore a number of alternatives to address the requirements for a shelter. The Committee considered the possibility of major renovations to the existing facility; replacing the existing shelter with a prefabricated modular building (this option was not considered durable enough to serve as the needed long-term solution); re-commissioning existing public or private buildings at alternative locations; and building a new shelter at an alternative County-owned site or at sites not currently owned by the County.

The Committee reviewed seventeen (17) available County-owned and commercial properties that might be appropriate for a new Animal Care shelter. When considering such factors as neighborhood and fiscal impacts (including both building and land acquisition costs), it was determined that a re-build of the existing facility was the best alternative. The existing site provided the least amount of impact on existing neighborhoods as animal control shelters are often met by moderate to strong oppositions; and, the costs of other proposed sites far exceeded the cost to re-build at the current location, even when accounting for the challenges anticipated in re-building at the current property which is next to and on bay-fill.

The San Mateo County Public Works Department received square footage requirements from PHS for each function that would be contained in a new animal care shelter. Based on this information and current trends in construction costs of similar facilities, it is estimated that the cost of construction will be between \$15.1 million to \$20.2 million to build a new 33,500 square foot animal care shelter at the current Airport Boulevard location.

The County is willing to manage the construction and advance the funding for construction of a new shelter at the Airport Boulevard site if each city enters into cost participation agreement to pay a portion of the costs through a 30-year interest-free lease of the shelter. The cost participation agreement is included as an attachment to this Staff Report.

The lease amount will be re-calculated each year over the term of the lease using a combination of shelter usage averaged over a three-year period (weighted at 80%), and population (weighted at 20%). The basis of this allocation is to attribute the larger share of the costs (80%) upon the

recent actual level of shelter services used by each jurisdiction, and a smaller portion (20%) based upon “potential” use based on population. The City Managers Association in San Mateo County has reviewed this allocation methodology and concur that this provides a reasonable basis upon which costs for the new facilities should be allocated. Based on Atherton’s current use of shelter services and current population, approval of this agreement will result in an annual estimated cost of \$4,297 to \$5,749, depending upon the final cost of construction.

According to the timeline provided by the County, construction would begin in July 2014 and construction would be completed in 12-18 months. The existing shelter will remain open during construction and all transition costs are included in the construction estimates.

If the Town chooses not to participate in the Agreement for cost participation in the construction of the new Animal Shelter, it would preclude the Town from participating in the countywide shared services model for Animal Control Services and, thus, the Town would need to develop its own means of providing those services independently when the current Animal Control Services agreement ends on June 30, 2015.

The Animal Care Shelter Agreement is not related to the current on-going Animal Care Services negotiations. A Committee made up of representatives from the various agencies is working with the County as part of the negotiation team. The Atherton City Manager serves on this committee.

FISCAL IMPACT

The Town’s current annual budget for animal control services is \$52,180, which incorporates costs associated with minor facilities repairs, but does not include a cost for facilities replacement. The construction of a new shelter is likely to reduce some of the Animal Control Contract costs. For instance, the cost of maintenance and repairs should be lower than what would have been associated with the existing shelter, and bringing the shelter within today’s animal care guidelines should have a positive impact on the physical and behavioral needs of the animals, shortening their stay thus reducing the cost of sheltering. Although it is impossible to forecast whether and how much can be expected in reduced annual operating costs, it is reasonable to believe that the total cost to the Town for animal control related expenses will increase by less than the estimated additional \$4,297 to \$5,749 in lease payments that the Town would incur relative to the cost of building the shelter.

ATTACHMENTS

- Memorandum of Agreement
- Cost Distribution

MEMORANDUM OF AGREEMENT

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

THIS MEMORANDUM OF AGREEMENT, dated for reference as of _____, 2013 (the "Agreement"), is by and among the COUNTY OF SAN MATEO (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 (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 _____, 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: _____

COUNTY OF SAN MATEO

Clerk of the Board

Dated: _____

Town Clerk

Dated: _____

City Clerk

Dated: _____

City Clerk

Dated: _____

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:

Dated: _____

City Clerk

CITY OF DALY CITY

By:

Dated: _____

City Clerk

CITY OF EAST PALO ALTO

By:

Dated: _____

City Clerk

CITY OF FOSTER CITY

By:

Dated: _____

City Clerk

CITY OF HALF MOON BAY

By:

Dated: _____

Town Clerk

TOWN OF HILLSBOROUGH

By:

Dated: _____

City Clerk

CITY OF MENLO PARK

By:

Dated: _____

City Clerk

CITY OF MILLBRAE

By:

Dated: _____

City Clerk

CITY OF PACIFICA

By:

Dated: _____

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: _____

City Clerk

CITY OF SAN MATEO

By:

Dated: _____

City Clerk

CITY OF SOUTH SAN FRANCISCO

By:

Dated: _____

City Clerk

TOWN OF WOODSIDE

By:

DRAFT

Methodology = Based on an 3-yr avg of shelter use (80%) and % of population (20%)

**ANIMAL CONTROL COSTS
PROPOSED COST DISTRIBUTION - ESTIMATED LEASE AMOUNTS TO RECOUP CONSTRUCTION COSTS**

CITY	Shelter Use	Shelter Use	Shelter Use				\$15,100,000	\$20,200,000
	CALENDAR YEAR							
	Yr 1 2009 Actual	Yr 2 2010 Actual	Yr 3 2011 Actual	3 YR AVG OF SHELTER USE	POPULATION	% of Total Pop	EST ANNUAL LEASE AMT	EST ANNUAL LEASE AMT
Atherton	1.12%	1.00%	0.36%	0.83%	6,914	1.0%	\$4,297	\$5,749
Belmont	3.26%	3.54%	2.65%	3.15%	25,835	3.6%	\$16,304	\$21,811
Brisbane	0.99%	0.99%	0.71%	0.90%	4,282	0.6%	\$4,211	\$5,633
Burlingame	3.51%	3.48%	3.20%	3.40%	28,806	4.0%	\$17,713	\$23,696
Colma	0.61%	0.98%	0.60%	0.73%	1,792	0.2%	\$3,191	\$4,268
Daly City	8.52%	9.57%	10.16%	9.42%	101,123	14.1%	\$52,087	\$69,679
East Palo Alto	6.61%	6.75%	8.44%	7.27%	28,155	3.9%	\$33,205	\$44,420
Foster City	2.82%	2.39%	1.93%	2.38%	30,567	4.3%	\$13,866	\$18,550
Half Moon Bay	5.21%	5.04%	2.47%	4.24%	11,324	1.6%	\$18,660	\$24,962
Hillsborough	1.59%	1.29%	1.14%	1.34%	10,825	1.5%	\$6,912	\$9,247
Menlo Park	4.90%	4.95%	4.50%	4.78%	32,026	4.5%	\$23,748	\$31,769
Millbrae	1.90%	1.99%	1.98%	1.96%	21,532	3.0%	\$10,896	\$14,576
Pacifica	5.72%	6.38%	4.78%	5.63%	37,234	5.2%	\$27,874	\$37,288
Portola Valley	0.90%	0.76%	0.16%	0.61%	4,353	0.6%	\$3,053	\$4,084
Redwood City	12.91%	13.24%	13.25%	13.13%	76,815	10.7%	\$63,647	\$85,143
San Bruno	5.23%	5.19%	6.86%	5.76%	41,114	5.7%	\$28,954	\$38,734
San Carlos	3.35%	3.45%	3.00%	3.27%	28,406	4.0%	\$17,134	\$22,921
San Mateo	15.82%	14.67%	17.84%	16.11%	97,207	13.5%	\$78,490	\$105,000
S. San Francisco	9.08%	9.34%	11.99%	10.14%	63,632	8.9%	\$49,733	\$66,530
Woodside	4.41%	1.27%	1.07%	2.25%	5,287	0.7%	\$9,801	\$13,111
County	1.57%	3.73%	2.92%	2.74%	61,222	8.5%	\$19,611	\$26,235
Total	100.00%	100.00%	100.00%	100.00%	718,451	100.0%	\$503,387	\$673,405