



Real Estate Assets Department
SDC003

County of SD/01

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Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



40

ORIGINAL



**CITY OF SAN DIEGO
LEASE**

BETWEEN

**THE CITY OF SAN DIEGO,
a California municipal corporation, as lessor**

AND

**THE COUNTY OF SAN DIEGO,
a political subdivision of the State of California, as lessee**

AT

5480 Gaines Street, San Diego, CA

DOCUMENT NO. RR 306889

FILED JUN 28 2011

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO
LEASE

THIS CITY OF SAN DIEGO LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and THE COUNTY OF SAN DIEGO, a political subdivision of the State of California ("LESSEE"), as lessee, to be effective as of **April 1, 2011** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY owns that certain improved real property (the "Premises") commonly known as the "County of San Diego Animal Services Central Shelter" located at **5480 Gaines Street**, San Diego, California, consisting of an approximately 38,000 square-foot building with surface parking, as shown in **Exhibit A: Premises**, attached hereto.
- B. Pursuant to San Diego Municipal Code section 44.0300 *et seq.*, CITY is obligated to provide animal control services to its citizens. To satisfy that obligation, CITY and LESSEE entered into that certain AGREEMENT BETWEEN CITY OF SAN DIEGO AND COUNTY OF SAN DIEGO FOR ANIMAL CONTROL SERVICES dated March 24, 2009, and filed in the Office of the San Diego City Clerk as Document No. RR-304741 on March 24, 2009 (the "Animal Services Contract," attached hereto as **Exhibit B: Animal Services Contract**), under which LESSEE performs CITY'S required animal control services as is an independent contractor.
- C. At a time when LESSEE needed to build new facilities for its own animal control services obligations, LESSEE contributed \$2 million to CITY for the construction of the improvements on the Premises to provide facilities within which LESSEE could perform its and CITY'S animal control services. LESSEE has no ownership interest in the Premises.
- D. The term of this Lease will coincide with the term of the Animal Services Contract, as may be amended from time to time.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Premises. CITY hereby leases to LESSEE and LESSEE hereby leases from CITY the Premises, under the terms and conditions of this Lease. LESSEE acknowledges and agrees that the square footage figures set forth in this Lease are reasonable approximations for reference only and shall not be subject to revision except with an actual physical change in the Premises. This Lease shall not create any agency, joint venture, or other relationship between CITY and LESSEE other than that of landlord and tenant.
- 2. Rent. LESSEE shall pay to CITY rent in the amount of One Dollar (\$1) for the entire Term.

3. Use. LESSEE shall use the Premises solely to provide the services required to be performed by LESSEE under the Animal Services Contract, and for no other purpose whatsoever without CITY'S prior written consent.
4. Term. The term of this Lease ("Term") shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Animal Services Contract. Currently, the Animal Services Contract will expire on June 30, 2013, but may by its terms be extended for an additional five years to expire on June 30, 2018.
5. Termination Compensation. If CITY terminates the Animal Services Contract for convenience, as provided in Section 12 (Termination for Convenience) of the Animal Services Contract, or if CITY elects not to renew the Animal Services Contract, in either case terminating this Lease, LESSEE will be faced with significant expenditures to relocate to another facility. Therefore, if CITY terminates the Animal Services Contract for convenience, or if CITY at any time elects not to renew the Animal Services Contract, CITY shall pay to LESSEE an amount (the "Termination Compensation") equal to twenty-five percent (25%) of the fair market value of the building only on the Premises. Such fair market value shall be determined by an appraisal at CITY'S cost prepared by an independent appraiser approved by LESSEE and CITY, with the date of value being the date of expiration or earlier termination of the Animal Services Contract. CITY shall pay such Termination Compensation to LESSEE within one year after the date of expiration or earlier termination of the Animal Services Contract. This Termination Compensation provision shall supersede any prior agreement between the parties related thereto, and shall survive the expiration or earlier termination of this Lease. Upon CITY'S written request, after the expiration or earlier termination of the Animal Services Contract and LESSEE'S receipt of the Termination Compensation, LESSEE shall execute and deliver to CITY a recordable quitclaim deed quitclaiming any and all interest LESSEE may have in and to the Premises.
6. CITY'S Consent, Discretion. Whenever required or permitted under this Lease, CITY'S consent or approval shall mean the written consent or approval of the City Manager of San Diego, or his or her designee ("City Manager"), unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. As used herein, "City Manager" shall be deemed to refer to "the Mayor or his/her designee" for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California.
7. Maintenance and Utilities of the Premises. LESSEE shall at LESSEE'S sole cost and expense and to CITY'S reasonable satisfaction, maintain the Premises in good order and repair and in a safe, healthy, and sanitary condition at all times during the Term, subject to normal and ordinary wear and tear resulting from the use. CITY shall at no time during the Term be required to make any improvements or repairs to the Premises. LESSEE shall keep the Premises free and clear of rubbish, debris, and litter at all times. LESSEE shall order,

obtain, and pay for all utilities and service and installation charges in connection with its use of the Premises.

8. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall be on a month-to-month basis, shall not be construed as a renewal or extension of this Lease, and all other terms and conditions of this Lease shall continue in full force and effect. If LESSEE is not providing animal control services to CITY on the Premises at any time during such holdover tenancy, CITY may then increase the rent under this Lease to fair market value, effective as of the cessation of such animal control services on the Premises. Such fair market rent shall be determined by an appraisal prepared either by a qualified CITY staff appraiser, at no cost to LESSEE, or at LESSEE'S option, by an independent appraiser approved by CITY and at LESSEE'S sole cost. CITY may terminate any holdover tenancy at will upon ninety (90) days prior written notice to LESSEE.
9. Prohibited Uses. LESSEE shall not: (a) use the Premises except as allowed under this Lease; (b) make any alterations or changes to the Premises without CITY'S prior written consent; (c) effect any capital repairs to the Premises without CITY'S prior written consent; (d) allow or permit any liens or encumbrances to be placed on any portion of the Premises; (e) use the Premises in any manner which may create a health, safety, or fire hazard; or (f) fail to pay all taxes assessed against LESSEE related to its tenancy, use, or occupancy of the Premises.
10. Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours written notice by CITY, or CITY may remove the item at LESSEE'S cost.
11. LESSEE'S Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE'S intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof, including but not limited to electrical and fire sprinkler systems, security, asbestos, air quality, and other environmental aspects, seismic and earthquake requirements, and compliance with the Americans with Disabilities Act and applicable zoning, municipal, county, state and federal laws, ordinances and regulations, and any covenants or restrictions of record. LESSEE shall maintain the Premises in good repair, and in a decent, safe, healthy, and sanitary condition. At the expiration or earlier termination of this Lease, LESSEE shall surrender the Premises in as good condition and repair as when LESSEE received the Premises, normal wear and tear excepted.
12. Entry and Inspection. CITY may, but shall not be obligated, to enter the Premises at all reasonable times for the purpose of viewing and ascertaining the condition of the Premises, to protect its interests in the Premises, or to inspect the operations conducted on the Premises.

13. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE, without CITY'S prior written consent and approval. LESSEE shall not make any major structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY'S prior written consent and approval. This provision shall not relieve LESSEE of its maintenance obligations under this. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
14. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of city, county, state, and federal governments at LESSEE'S sole cost and expense. LESSEE shall comply with any and all written notices issued under the authority of any law, statute, ordinance, or regulation.
15. Mutual Indemnification & Hold Harmless. Each party shall protect, defend, indemnify, and hold the other party and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the indemnifying party's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with the indemnifying party's acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that the indemnifying party's duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of the other party and its elected officials, officers, employees, representatives, and agents.
16. Insurance. LESSEE shall deliver to CITY'S Real Estate Assets Department a current certificate of insurance for:
- (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
 - (2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers'

Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- c. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- f. Modification. To assure protection from and against the kind and extent of risk existing with the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to the Premises.
- g. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- h. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE'S insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
 - i. Self Insurance. In lieu of obtaining the insurance policies required under this section (Insurance), LESSEE may deliver to CITY evidence satisfactory to CITY that LESSEE is self-insured to the limits required hereunder and in accordance with applicable law, and shall pay all claims related to this Lease that would be covered by a third-party insurance company in the usual course of business.
17. Hazardous Substances. LESSEE shall not allow the installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE'S agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY'S prior written consent. LESSEE shall, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is hereby incorporated into this Lease.
 - b. Remediation. If LESSEE'S occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - c. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or

earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be responsible for any and all reasonable costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

- d. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S occupancy, use, development, maintenance, or restoration of the Premises, including without limitation costs of environmental assessments; costs of regulatory remediation oversight; costs of remediation and removal; any necessary CITY response costs; all fines, penalties or fees assessed by any regulatory agency; damages for injury to natural resources, LESSEE'S elected officials, officers, employees, invitees, guests, agents, or contractors, or the public; and all costs of any health assessments or health effect studies.
- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, written notice to comply, or written notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE'S occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE'S Operations"), resulted in any hazardous substance being released on, from, or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Such environmental assessment shall establish what, if any, hazardous substances have been caused by LESSEE'S Operations on, in, from, or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. If the

environmental assessment concludes that LESSEE'S Operations caused the release of a hazardous substance on, from, or beneath the Premises, LESSEE shall pay for the environmental assessment and LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all reasonable costs and expenses therefor.

18. Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without CITY'S prior written consent, in each instance. CITY'S consent to any assignment, subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall, at CITY'S option, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without CITY'S written consent.
19. Nondiscrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
20. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY'S request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY'S goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
21. Taxes. LESSEE shall pay and discharge, before delinquency, all taxes and assessments which may be levied against LESSEE by reason of LESSEE'S possessory interest in the Premises. LESSEE'S payment for such taxes and assessments shall not reduce any rent due CITY.

22. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
23. Drug-free Workplace. LESSEE shall comply with the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition;
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace;
 - ii. LESSEE'S policy of maintaining a drug-free workplace;
 - iii. any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. penalties that may be imposed upon employees for drug abuse violations;

AND

- c. Include in each sublease agreement language indicating the sublessee's agreement to abide by these provisions for a drug-free workplace.

LESSEE and its sublessees shall each be responsible for their own drug-free workplace program.

24. Disabled Access Compliance. LESSEE shall comply with Title 24 of the California Code of Regulations (i.e., the "Building Code", as defined in Title 24 of the California Health and Safety Code), the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include without limitation the following:
- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;

- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE;
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site, as required by law;
- d. Where required by law, LESSEE shall, at LESSEE'S sole cost and in conformance with all applicable building codes, comply with CITY'S disabled access requirements by making accessible any areas of the Premises which deny access to disabled persons; and
- e. LESSEE shall include language in each sublease agreement indicating the sublessee's agreement to abide by the foregoing provisions.

LESSEE and each of its sublessees shall be individually responsible for their own ADA compliance program. LESSEE'S failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Lease.

25. Default and Remedies.

- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
 - i. LESSEE fails to make any payment required under this Lease when due;
 - ii. LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated a bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.
- b. Remedies. Upon LESSEE'S default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- i. the worth at the time of award of any unpaid rent that was due at the time of termination;
- ii. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- iii. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- iv. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE'S breach and default, or that in the ordinary course of things, would be likely to result; and
- v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses b(i), b(ii), and b(iii), above, the "worth at the time of award" shall be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE'S default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:
 - i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY'S written notice of such costs to LESSEE, and mortgagee or beneficiary;
 - ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct

the default or to pay the costs of correction performed by or at the direction of CITY; and

- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is noncurable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY'S written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the property, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by the Mayor. CITY'S delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY'S acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of CITY-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any

breach or default. CITY'S acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

26. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed, respectively, as follows:

THE CITY OF SAN DIEGO
Attn: Real Estate Assets Department
1200 Third Avenue, Suite 1700
M. S. 51A
San Diego, CA 92101

With a copy by First Class Mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

COUNTY OF SAN DIEGO
Attn: Department of General Services
Real Estate Services Division
5555 Overland Avenue, Ste. 2110
Bldg. 2, Room 110, MS 0-200
San Diego, CA 92123-1294

Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.

27. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
28. Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
29. Captions. The section headings and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers shall have no effect on the enforceability of this Lease.
30. Lease Modifications. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.
31. Time is of the Essence. Time is of the essence to the performance of this Lease.

32. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or earlier termination of this Lease.
33. Governance. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California.
34. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.
35. Successors and Assigns. Except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and jointly and severally bind the successors and assigns of the respective parties.
36. Attorney Fees. If any party brings an action or proceeding against another party under this Lease, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorney fees and costs therefor. If, as a result of an action brought by or against LESSEE relating to LESSEE'S leasehold or otherwise in connection with this Lease, and CITY intervenes therein, becomes a party, or is made a party thereto, LESSEE shall pay all of CITY'S expenses thereof, including without limitation costs and attorney fees.
37. Entire Understanding. This Lease contains the entire understanding of the parties. There is no other written or oral understanding between the parties with respect to this Lease or the Premises. Each party has relied solely on its own examination of the Premises and advice from its own attorneys and experts in entering into this Lease. No other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by all parties. LESSEE shall pay to CITY an administrative fee for any modification, amendment or alteration of this Lease requested by LESSEE. Such administrative fees are established by the Mayor and may be revised from time to time.

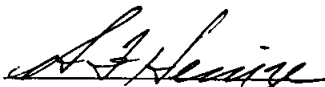
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38. Authority. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date:

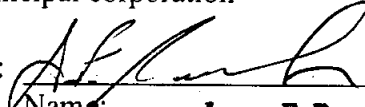
Date: 11/15/11

THE COUNTY OF SAN DIEGO, a political
subdivision of the State of California

BY: 
Name: April F. Heinze, P.E.
Title: Director, General Services

Date: 11/21/11

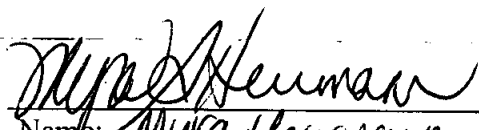
THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 
Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

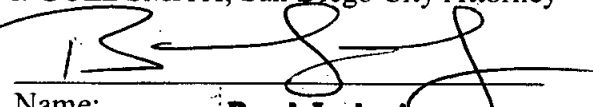
Issuance of this Lease is Categorically Exempt from CEQA pursuant to State CEQA Guidelines
Section 15301 (Existing Facilities).

Date: 9/1/11

BY: 
Name: Myra Herrmann
Title: Senior planner

Approved as to Form and Legality:

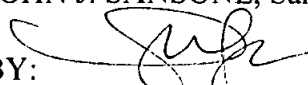
JAN I. GOLDSMITH, San Diego City Attorney

BY: 
Name: Brock Ladewig
Title: Deputy City Attorney

Approved as to Form and Legality:

THOMAS E. MONTGOMERY

JOHN J. SANSONE, San Diego County Counsel

BY: 

Name: LORI A. WINFITT

Title: SENIOR DEPUTY

Exhibit A: Premises



1. **STATIONARY UNIT**
 2. **EVACUATION ROUTE**
 3. **FIRE EXTINGUISHING LOCATION**
 4. **FIRE ALARM PULL**
 5. **YOU ARE HERE**

COUNTY OF SAN DIEGO ANIMAL SERVICES
5480 GAINES STREET

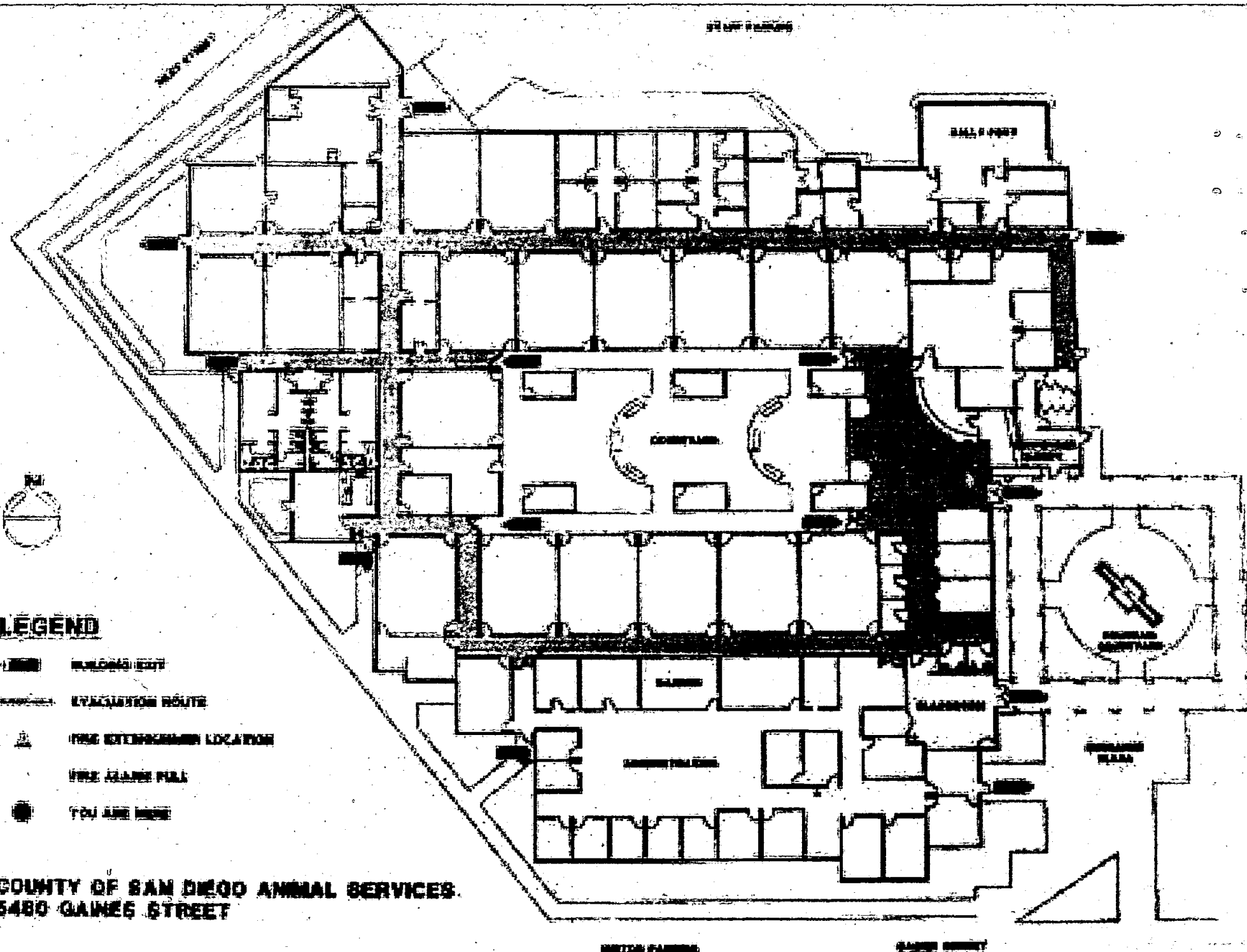


Exhibit B: Animal Services Contract

ORIGINAL

AGREEMENT BETWEEN CITY OF
SAN DIEGO AND COUNTY OF
SAN DIEGO FOR ANIMAL CONTROL SERVICES

THIS AGREEMENT made and entered into this 24th day of March, 2009
between the County of San Diego, a political subdivision of the State of California
("COUNTY") and the City of San Diego, a chartered municipal corporation ("CITY").

WITNESSETH

WHEREAS, CITY is a chartered municipal corporation of the State of California
within the County of San Diego and desires to obtain animal control services from
COUNTY; AND

WHEREAS, COUNTY is a political subdivision of the State of California and
through its Department of Animal Services ("ANIMAL SERVICES"), desires to provide
animal control services to CITY; and

WHEREAS, Section 500.4 of the Charter of the County of San Diego and
sections 51300 et seq. of the Government Code authorize COUNTY and CITY to
contract for the performance of animal control services within CITY.

NOW, THEREFORE, in consideration of the mutual promises contained herein
and other valuable consideration, the receipt and sufficiency are hereby acknowledged,
CITY AND COUNTY agree as follows:

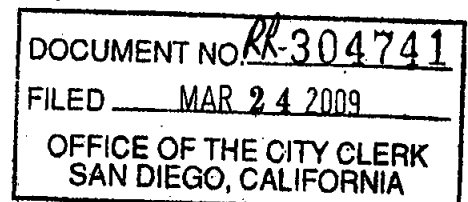
SECTION 1
TERM OF AGREEMENT

1. This Agreement shall take effect July 1, 2008 and shall terminate on June
30, 2013 unless terminated sooner as provided for herein. The agreement may be
extended beyond June 30, 2013 for additional five-year terms with written consent of the
parties, subject to approval by the City of San Diego City Council in accordance with San
Diego City Charter section 99.

SECTION 2
DEFINITIONS

For purposes of this Agreement, the words listed below shall have the definitions
as indicated.

1. The term "CITY" means the City of San Diego.
2. The term "Director" means the Director of the County Department of
Animal Services.



3. The term "Fiscal Year" means the 12-month period beginning on July 1 and ending the following year on June 30.

4. The term "Population" means the State Department of Finance's estimate of each jurisdiction's most recent January population.

5. The term "Requests for Service" means specific requests from CITY representatives or individual residents of the CITY for action or response by an Animal Control Field Officer, as well as actions by Animal Control Officers to enforce animal related laws based on the observations of Animal Control Officers.

6. The term "on-site veterinarian services" means emergency triage care; the diagnosis and treatment of acute injuries and illnesses; the treatment of chronic illnesses and injuries to the extent that the animals are kept comfortable; the prescribing of analgesics to alleviate pain; and the spaying and neutering of adoption animals.

7. The term "dangerous dog" has the same meaning as the term is defined under section 62.601 of the San Diego County Code of Regulatory Ordinances.

SECTION 3 SCOPE OF SERVICE

1. COUNTY, through ANIMAL SERVICES, shall provide general animal control services within the corporate limits of CITY to the extent and in the manner hereinafter set forth.

2. Such services shall be defined as those duties and functions of the type coming within the jurisdiction of and customarily rendered by ANIMAL SERVICES under the County of San Diego Code of Regulatory Ordinances and the statutes of the State of California. In providing services to CITY, COUNTY shall make its best efforts to achieve service responses/service goals as defined in Section 5. The Director shall have discretion in determining how the level of service shall be achieved by COUNTY. CITY may provide input to the Director on the manner in which services are provided to CITY.

SECTION 4 LEVELS OF SERVICES

1. ANIMAL SERVICES shall provide the following animal control services, unless the parties to this Agreement agree in writing to any changes in the provision of such services:

A. Shelter Management Services:

(1) Operate, 24 hours per day, seven days per week, a holding shelter for the feeding and care of CITY's lost, abandoned and impounded animals. COUNTY will operate two holding shelters outside of CITY and one shelter within CITY. One shelter will be located in the north San Diego County region and another shelter will be located in the south San Diego County region. COUNTY may, in its discretion, open additional holding shelters to meet future animal control shelter needs. At the Director's discretion, the shelter nearest to CITY shall provide for the feeding and care of CITY's lost abandoned and impounded animals. If extraordinary circumstances arise that require the placement of CITY animals in a shelter other than a shelter nearest to CITY, COUNTY shall notify CITY of this fact. The shelters shall maintain on-site veterinarian services.

(2) COUNTY shall maintain its shelters in a humane manner and shall keep its shelters in a sanitary condition at all times. All services furnished by the COUNTY's shelters shall be provided in accordance with applicable state and local laws. COUNTY shall use humane methods in the care and disposition of any animal coming under its jurisdiction.

(3) COUNTY shall provide public access to shelters a minimum of 5 days per week (40 hours per week), which shall include at least one weekend day, for adoption services, humane euthanasia of animals, public nuisance hearings, general impoundment and dangerous dog hearings. In establishing the days and times for public access to shelters, the public interest and customer service shall be a primary consideration.

B. Field Services:

COUNTY will provide the following Field Services for CITY:

- (1) rescue injured animals and reptiles in CITY;
- (2) pickup and impound stray animals and reptiles in CITY;
- (3) quarantine biter animals that are in CITY;
- (4) investigate reports of dangerous dogs in CITY;
- (5) respond to requests for service and, when required, issue citations for violations of local and state laws that occur within CITY'S jurisdiction;
- (6) investigate matters that occur within CITY's jurisdiction regarding cruelty or neglect to animals;
- (7) return lost dogs found in CITY to their owners in the field, if possible;
- (8) present cases involving violations of animal-related laws that occur in CITY to the District Attorney or City Attorney for prosecution; and
- (9) investigate and license kennels (as defined in San Diego Code of Regulatory Ordinances, section 62.601) located in CITY.

C. Licensing Services:

- (1) maintain files of dog licenses and dog licenses that have expired and the owners of these dogs who live in CITY's jurisdiction;

- (2) issue new and renewed licenses to dog license applicants within CITY's jurisdiction;
- (3) conduct follow-up enforcement of vaccinated but unlicensed dogs and unvaccinated and unlicensed dogs within CITY's jurisdiction. Such enforcement efforts shall include, but are not limited to, written correspondence and telephone communication with dog owners;
- (4) with CITY, jointly organize and fund rabies vaccination clinics for animal owners residing within CITY, which may be held at least annually within CITY or within close proximity of CITY. Joint funding by CITY and COUNTY may include provision of services or funds. Prior to commencement of rabies vaccination clinics, COUNTY and CITY shall agree as to the level of funding or scope of services each party shall contribute for the operation of the rabies vaccination clinics;
- (5) provide computer support for services provided to CITY under this Agreement; and
- (6) Provide dog owners with reasonable advance notice of the need for license renewals prior to expiration of existing license.

D. Veterinary Medical Services:

- (1) maintain on-site veterinarian services at shelters;
- (2) contract for 24-hour emergency medical treatment for injured animals;
- (3) inoculate animals in care of ANIMAL SERVICES;
- (4) develop rabies control resources information for CITY; and
- (5) monitor quarantined biter animals.

E. Dead animal pick-up services are specifically excluded from this Agreement.

F. COUNTY, with cooperation from CITY, shall develop and implement a marketing plan to encourage citizen participation in ANIMAL SERVICES' programs and services. Such marketing plan may include, but is not limited to, encouraging responsible pet ownership including licensing and compliance with pet-related laws, adoption of shelter animals, rabies vaccination and spaying and neutering of animals. Such marketing plan may also include a public-private partnership with private entities to jointly market ANIMAL SERVICES' programs and services. Such marketing program shall include recommendations made by the Ad Hoc Committee described in Section 13.

G. Upon written request by CITY, COUNTY may provide additional services not included in Section 4, paragraph A through F or may increase the level of existing services specified in Section 4, paragraph A through F. The nature, scope and cost of such additional services and/or increased level of services shall be mutually defined and made a part of this Agreement under the Joint Operating and Financial Plan, as described in Section 6, upon approval of COUNTY and CITY.

H. COUNTY shall be excused from performance of its obligations under this Agreement to the extent that it is prevented from performing any services as a result of delays caused by an act of God, war, civil disturbance, court order, governmental action, laws, orders, or as a result of events such as public enemies, fires, earthquakes, floods, strikes or other labor disturbances of COUNTY or CITY, or other cause beyond its reasonable control that could not have been prevented by reasonable precautions, and, except as set forth herein, such nonperformance shall not be a default hereunder or a ground for termination. If COUNTY'S cost of providing services to CITY decreases as a result of the above, CITY may be entitled to a proportionate reduction in the cost of services for the period of time in which services were not provided.

SECTION 5 SERVICE RESPONSES/SERVICE GOALS

1. COUNTY shall make its best effort to respond to Priority 1 calls within one hour. Priority 1 calls are defined in Attachment A.
2. COUNTY shall make its best effort to respond with a minimum of 85% efficiency to Priority 2, 3 and 4 calls within 12, 24 and 72 hours respectively. Priority 2, 3 and 4 calls are defined in Attachment A.
3. COUNTY shall make its best effort to increase the percentage of animals that are claimed by their owners and to increase the percentage of animals that are adopted.
4. COUNTY shall make its best effort to decrease the percentage of animals that are euthanized.
5. COUNTY shall make its best effort with assistance from the CITY to increase the per capita rate of licensed dogs.
6. COUNTY shall make its best effort to increase the percentage of licensed dogs that are altered each fiscal year.
7. COUNTY shall make its best effort to ensure that all alterable animals are spayed or neutered prior to adoption from COUNTY shelters.

SECTION 6 JOINT OPERATING AND FINANCIAL PLAN

1. Throughout the term of this Agreement, CITY and COUNTY shall, on a fiscal year basis, prepare a written Joint Operating and Financial Plan for the services to be provided under Sections 3 through 4. The Joint Operating and Financial Plan shall state the total gross cost, estimated revenues and the net cost for the services specified under Sections 3 through 4. The gross cost, estimated revenues and net cost shall be calculated according to paragraphs 2 and 3 of Section 6. CITY shall pay COUNTY the net cost for animal control services provided under this Agreement. The annual written Joint Operating and Financial Plans shall be approved by CITY and COUNTY prior to the beginning of each fiscal year and shall be effective for the applicable fiscal year. The annual Joint Operating and Financial Plan shall be made a part of this Agreement as Attachment B. Successive annual Joint Operating and Financial Plans shall supercede and replace the preceding Joint Operating and Financial Plans. By February 1 of each

fiscal year, COUNTY shall provide CITY a preliminary estimate for the next fiscal year of the gross cost, estimated revenues and net cost for animal control services for the next fiscal year.

2. COUNTY shall calculate on a fiscal year basis the gross cost of providing animal control services to CITY using the 50/50 Costing Methodology as follows: COUNTY shall determine its budgeted fiscal year total cost to provide animal control services to its entire service area, excluding overhead costs that COUNTY would otherwise incur regardless of whether COUNTY provides services to the contract cities. The budgeted fiscal year total cost shall include those indirect costs specified in Federal Circular A-87. One-half of CITY'S gross cost shall be determined by CITY'S proportionate share of ANIMAL SERVICE's total service area population multiplied by one-half of the budgeted fiscal year total cost. The remaining 50% of the gross cost will be calculated based upon CITY'S proportionate share of the prior year's total requests for service received by ANIMAL SERVICES from its entire service area multiplied by one-half of the budgeted fiscal year total cost.

3. COUNTY shall receive and collect throughout the term of this Agreement license and other fees specified under COUNTY'S Animal Control Services Fee Resolution that are paid by residents of CITY. COUNTY will calculate on an annual basis an estimate of the actual amounts expected to be received and collected by COUNTY as payment of license and other fees by residents of CITY. COUNTY shall subtract from the annual gross cost the annual estimated revenues collected within CITY to arrive at an annual net cost. CITY will pay COUNTY the annual net cost for providing animal control services as stated in the annual Joint Operating and Financial Plan. Spay/Neuter Deposit Forfeiture Account funds will be excluded from this calculation and will be allocated according to State law. Any amounts that may be retained by private persons and private and non-profit entities for processing or issuing licenses or for marketing ANIMAL SERVICES' programs and services under Section 4, subdivision F shall be excluded from the calculation of estimated or actual revenues.

4. If at the end of the fiscal year, COUNTY does not collect the annual estimated amount of revenues, CITY shall pay COUNTY the difference between the actual annual amount of revenues collected and the annual estimated amount of revenues within 60 days of written notice of deficiency of revenues from COUNTY. If COUNTY collects revenues in excess of the estimated amount of revenues, COUNTY will refund the excess revenues to CITY within 60 days of written notice of surplus. COUNTY shall provide written notice of surplus or deficiency to CITY within 30 days after the end of each fiscal year. Upon receipt of written notice, CITY may instruct COUNTY to apply excess revenues against future gross cost.

5. CITY shall pay the net cost to COUNTY by making quarterly payments of the total net cost per fiscal year for animal control services rendered pursuant to this Agreement and the approved Joint Operating and Financial Plan. Such payments shall be made by July 15, October 15, January 15 and April 15. Failure to provide payment by the due date shall relieve ANIMAL SERVICES of its obligations to provide animal

control services to CITY. COUNTY shall send CITY an invoice for animal control services 30 days before the quarterly due dates for payment.

6. If payments provided for in Section 6 are not delivered to COUNTY within 45 days of the due date for payment, as stated in paragraph 5 above, COUNTY is entitled to recover interest thereon. Interest shall be calculated at the rate of 10% per annum on any unpaid portion thereof calculated from the last day of the month in which the services were performed.

7. If such payments are not delivered to COUNTY office at the address listed below within 45 days of the due date for payment, COUNTY may offset such indebtedness, including interest thereon, from property tax funds of CITY on deposit with COUNTY in accordance with Government Code 907, as may be amended from time to time.

COUNTY OF SAN DIEGO
DEPARTMENT OF ANIMAL SERVICES
5480 GAINES STREET
SAN DIEGO, CA 92110

8. Failure by COUNTY and/or CITY to approve the annual Joint Operating and Financial Plan prior to the beginning of the fiscal year (July 1), is grounds for termination of this Agreement. Such termination shall be under the same terms and conditions as Section 12, "Termination For Convenience." As such, COUNTY shall continue to provide animal control services for one fiscal year ending the following June 30 under the terms of this Agreement and the last approved Joint Operating and Financial Plan. CITY shall pay COUNTY for animal control services rendered under the terms of this Agreement and the last approved Joint Operating and Financial Plan through the effective date of the termination.

SECTION 7
RECORD KEEPING

1. COUNTY shall keep separate records for CITY in such form and manner as the County Auditor & Controller shall specify. COUNTY shall give CITY, at a minimum, monthly reports of information including impounds, claims, dog licenses sold for altered/unaltered dogs, revenues, requests for services, adoptions and animals euthanized from CITY. The monthly report shall include CITY and regional information.

2. All non-confidential records maintained by COUNTY evidencing animal control services provided to CITY shall be open for copying, examination and audit by CITY during all business hours. COUNTY shall retain these records for a minimum of three years.

SECTION 8 SPAY/NEUTER PROGRAM

1. COUNTY and CITY shall establish a spay/neuter program for CITY. To finance the spay/neuter program, COUNTY, at the sole discretion of the Director, will allocate an amount equivalent to 5% of all license fee revenues collected by COUNTY for deposit into a separate trust fund account ("Spay/Neuter Surcharge Trust Fund"). Funds deposited into or expenditures made from the Spay/Neuter Surcharge Trust Fund shall not be considered in calculating estimated revenues or costs under Section 6.

2. Funds deposited in the Spay/Neuter Surcharge Trust Fund may be used only for encouraging the spaying or neutering of pets owned by residents of CITY. COUNTY shall operate a spay/neuter program or contract with a responsible provider to operate a spay/neuter program for the direct benefit of CITY'S residents. COUNTY and the CITY, with recommendations from the Ad Hoc Committee, as described in Section 13, shall determine how the portion of Spay/Neuter Trust Funds contributed by residents of CITY shall be allocated.

SECTION 9 CITY ASSISTANCE

1. In performing the services pursuant to this Agreement, COUNTY shall have all the powers of CITY and shall receive all cooperation possible from CITY, its officers, agents and employees to enable efficient enforcement of such local and state laws as specified in this Agreement and to effectuate collections called for hereunder.

2. For the purpose of performing animal control services under this Agreement, COUNTY shall furnish and supply all necessary personnel, labor, supervision, equipment and supplies necessary to maintain the level of service to be rendered hereunder. COUNTY will notify CITY of any changes in ANIMAL SERVICE'S executive staff.

3. All persons employed in the performance of such services and functions for CITY pursuant to this Agreement shall be COUNTY employees. No CITY employees shall perform services or functions that COUNTY is obligated to provide under this Agreement. All persons employed by COUNTY to perform the services pursuant to this Agreement shall be entitled solely to the rights and privileges given to COUNTY employees and shall not be entitled, as a result of providing services pursuant to this Agreement, to any additional rights and privileges given to CITY employees.

4. COUNTY is an independent contractor, and no agency relationship, either expressed or implied, is created by the execution of this Agreement.

5. CITY shall not be liable for the direct payment of any salaries, wages or other compensation to any COUNTY personnel performing services hereunder for COUNTY or any liability other than that provided for in this Agreement.

6. Except as specified otherwise, CITY shall not be liable for compensation or indemnity to any COUNTY employee for injury or sickness or any other claims arising out of his or her employment.

7. CITY shall adopt an ordinance identical to, or adopt by reference, the provisions of Chapter 6 and 7, Division 2, Title 6 of the San Diego County Code of Regulatory Ordinances and any amendments to such ordinances and the COUNTY'S most current fee resolution, unless any deviations are specifically agreed to in writing by the Director.

SECTION 10 DEFENSE AND INDEMNIFICATION

1. COUNTY shall defend and indemnify CITY, its agents, officers and employees (collectively, "CITY"), from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of COUNTY in the performance of this Agreement. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve COUNTY of any obligation imposed by this Agreement. CITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

2. CITY shall defend and indemnify COUNTY, its agents, officers and employees (collectively, "COUNTY") from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of CITY in the performance of this Agreement. At its sole discretion, COUNTY may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve CITY of any obligation imposed by this Agreement. COUNTY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense.

3. COUNTY shall defend itself, and CITY shall defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of COUNTY and CITY. In such cases, COUNTY and CITY shall retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5 below.

4. Notwithstanding paragraph 3 above, in cases where COUNTY and CITY agree in writing to a joint defense, COUNTY and CITY may appoint joint defense counsel to defend the claim, action or proceeding arising out of the

concurrent acts or omissions of COUNTY and CITY. Joint defense counsel shall be selected by mutual agreement of COUNTY and CITY. COUNTY and CITY shall share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5 below. COUNTY and CITY further agree that neither party may bind the other to a settlement agreement without the written consent of both COUNTY and CITY.

5. Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, COUNTY and CITY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

SECTION 11 TERMINATION

1. Notwithstanding anything to the contrary herein contained, this Agreement shall be terminated at any time that CITY fails to enact or adopt by reference and to maintain in full force and effect, including the amount of fees provided in the COUNTY's most current fee resolution, an ordinance identical to the provisions of Chapter 6 and 7, Division 2, Title 6 of the San Diego County Code of Regulatory Ordinances, unless any deviations are specifically agreed to by the Director. This Agreement shall also be terminated if COUNTY requests that CITY enact amendments to aid ordinance and such amendments are not made within 90 days of this request.

2. If COUNTY fails to provide animal control services, as required under this Agreement and/or in the Joint Operating and Financial Plan, CITY may provide written notification to COUNTY of such failure to provide services. COUNTY shall be given 30 days from the date of receipt of written notification by CITY to provide the required animal control services. If COUNTY fails to provide such services after 30 days from receipt of written notification, CITY may terminate this Agreement upon 30 days additional written notice.

3. In the event of termination under Section 11, CITY shall pay COUNTY on a prorated basis for animal control services rendered consistent with this Agreement and the Joint Operating and Financial Plan through the date of termination.

SECTION 12 TERMINATION FOR CONVENIENCE

1. CITY acknowledges that in order to provide animal control services pursuant to this Agreement, COUNTY must conduct long range planning for funding, new shelter development and staff requirements. Therefore, notwithstanding any other section or provision of this Agreement, either party may terminate this Agreement by giving a one-year advance written notice of intention to terminate.

**SECTION 13
AD HOC COMMITTEE**

1. COUNTY shall form an Ad Hoc Committee consisting of a representative from each of the cities to which COUNTY provides animal control services by contract. Each member of the Ad Hoc Committee shall have the opportunity to provide input regarding animal control services, future fees and fee changes.

**SECTION 14
FUNDING BY CITY**

1. If CITY fails to appropriate funds for this Agreement, such action shall not be considered a breach of this Agreement. Under no circumstances shall CITY fail to appropriate funds for this Agreement for the purpose of obtaining animal control services from another provider or to establish its own animal control services department without providing COUNTY with one year notification as specified in Section 12.

**SECTION 15
CONTRACT ADMINISTRATION**

1. COUNTY designates the Director or his/her designated representative to represent COUNTY in all matters pertaining to the administration of this Agreement.

2. CITY designates its City Manager or designated representative to represent CITY in all matters pertaining to this Agreement on behalf of CITY.

3. Any notice or notices provided for by this Agreement or by law to be given or served upon COUNTY may be given or served in person or by letter deposited in the United States mail, postage prepaid and addressed to:

**DIRECTOR OF ANIMAL SERVICES
5480 GAINES STREET
SAN DIEGO, CA 92110**

4. Any notice or notices provided for by this Agreement or by law to be given or served upon CITY may be given or served in person or by letter deposited in the United States mail, postage prepaid and addressed to:

**ALLEGRA PAJOT
1401 BROADWAY, MS 715
SAN DIEGO, CA 92101-5729**

5. The parties acknowledge that CITY is required by the San Diego Municipal Code and City Council policies to incorporate certain contractual provisions into all CITY contracts. The contractual provisions are included in the "City of San

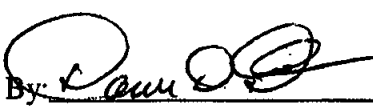
Diego Contract Requirements," attached hereto as Attachment C and incorporated by reference herein.

IN WITNESS WHEREOF, CITY, by resolution duly adopted by its City Council, has approved the execution of this Agreement by its City Manager, and COUNTY, by order of its Board of Supervisors, has approved the execution of this contract by the Clerk of the Board of Supervisors of the County of San Diego, this ____ day of _____, 20__.

CITY

COUNTY OF SAN DIEGO

By:  _____

By:  _____

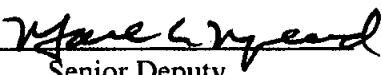
Director of Animal Services

Approved as to form and legality

Approved as to form and legality
County Counsel

By:  for 4/23/09

City Attorney

By:  _____

Senior Deputy

ATTACHMENT A

COUNTY OF SAN DIEGO DEPARTMENT OF ANIMAL SERVICES RESPONSE PRIORITY LEVELS

TYPE OF SERVICE	RESPONSE PRIORITY LEVEL	
	IN PROGRESS	NOT IN PROGRESS
Threatening Dangerous Animal	1	3
Possible Rabid/Biter Animal	1	3
Major Injury to Animal	1	3
Threat from Wild Animal	1	3
Cruelty	1	3
Animal Inside Vehicle	1	3
Fighting Animals	1	3
Dogs harassing Livestock	1	3
Sick/Minor Injury Animal	2	3
Animal Welfare	2	3
Isolation of Biting Animal for Rabies Examination	3	N/A
Confined Stray Animal	3	N/A
Relinquished Animal	3	4
Restraint of Animal	3	4
Wild Animal	3	4
Misc. Patrol Services	3	4

PRIORITY LEVEL	RESPONSE GUIDELINES
LEVEL 1	First priority; response objective is within one hour. Officer responds before all lower priority calls.
LEVEL 2	Second Priority; response objective is within 12 hours of receipt.
LEVEL 3	Third Priority; response objective is within 24 hours of receipt.
LEVEL 4	Fourth Priority; response objective is within 72 hours of receipt.

ORIGINAL

ATTACHMENT B

**City of San Diego
Contract Animal Control Services Program
Joint Operating and Financial Plan
Fiscal Year 2009-10**

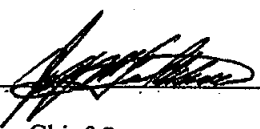
This Joint Operating and Financial Plan made and agreed to for the period beginning July 1, 2009 and ending June 30, 2010, by and between the City of San Diego and the County of San Diego shall become a part of the Agreement between said parties.

The County of San Diego shall provide animal control services to the City of San Diego as specified in Sections 3 through 5 of the Agreement. The gross cost of providing animal control services to San Diego for fiscal year 2009-10 shall be \$8,966,782. The County shall collect license and other fees, as specified under the County's Animal Services Fee Resolution within City of San Diego. For fiscal year 2009-10, the estimated revenue amount to be collected within City of San Diego is \$1,575,000. After deducting estimated revenues from gross cost, the City of San Diego shall pay County the net amount of \$7,448,782, which includes the amount of \$57,000.00 to finance the spay/neuter program as provided for in Sections 6 and 8 of the Agreement. The City of San Diego shall pay County in quarterly payments as specified in Section 6, paragraph 5 of the Agreement.

As approved:

CITY OF SAN DIEGO

COUNTY OF SAN DIEGO

By: 

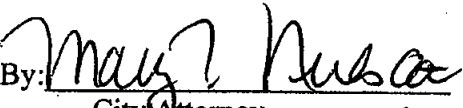
Chief Operating Officer

By: 

Director of Animal Services

Approved as to form and legality

Approved as to form and legality
County Counsel

By: 

City Attorney

9-3-09

By: 

Senior Deputy

Document No. **C-15028**
Filed **SEP 09 2009**
Office of the City Clerk
San Diego, California

ATTACHMENT C

City of San Diego Contract Requirements. To the extent appropriate in light of the rights and duties specified in this Agreement, the following requirements shall apply:

1. **Drug-Free Workplace.** The COUNTY agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference.

2. **ADA Certification.** The COUNTY hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

3. **Non-Discrimination Requirements.**

3.1 **Compliance with the City's Equal Opportunity Contracting Program.** The COUNTY shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements. The COUNTY shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The COUNTY shall provide equal opportunity in all employment practices. The COUNTY shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the COUNTY liable for any discriminatory practice of its Subcontractors.

3.2 **Non-Discrimination Ordinance.** The COUNTY shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subcontractors, vendors or suppliers. The COUNTY shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The COUNTY understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the COUNTY and any Subcontractors, vendors and suppliers.

3.3 **Compliance Investigations.** Upon the City's request, the COUNTY agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the COUNTY has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the COUNTY for each subcontract or supply contract. The COUNTY further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] The COUNTY understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the COUNTY up to and including contract termination, debarment, and other sanctions for

violation of the provisions of the Nondiscrimination in Contracting Ordinance. The COUNTY further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

101
J128

RESOLUTION NUMBER R- 306889

DATE OF FINAL PASSAGE JUL 06 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE LEASING OF CITY-OWNED PROPERTY AT 5480 GAINES STREET TO THE COUNTY OF SAN DIEGO FOR ANIMAL CONTROL SERVICES.

WHEREAS, in 1971, the City of San Diego (City) leased certain City-owned real property at 5480 Gaines Street to the County of San Diego (County) under a lease agreement (Lease) in conjunction with a separate agreement with the County to provide animal control services within the City of San Diego; and

WHEREAS, in 1984, the Lease was amended to increase the size of the leased premises and extend the lease term for an additional 18 years; and

WHEREAS, in 2000, the Lease was further amended to enable the County to co-locate with the San Diego Humane Society and construct new facilities; and

WHEREAS, the Lease expired on December 31, 2008, and was placed on holdover pending a new animal control services agreement between the City and the County; and

WHEREAS, a new animal control services agreement (New Animal Control Contract) was finalized and filed in the office of the San Diego City Clerk as Document No. RR-304741; and

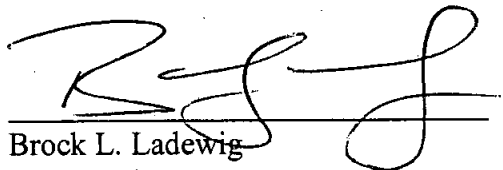
WHEREAS, City staff have negotiated a new lease agreement with the County to be co-terminus with the New Animal Control Contract, which will expire on June 30, 2013, but may

by its terms be extended for an additional five years to expire on June 30, 2018; NOW,
THEREFORE,

BE IT RESOLVED, by the San Diego City Council, that the Mayor or his designee is authorized to execute and deliver the Lease Agreement, on file in the Office of the City Clerk as Document No. RR- 306889, with the County of San Diego for animal control services at 5480 Gaines Street, to be co-terminus with that certain Agreement for Animal Control Services filed in the office of the San Diego City Clerk as Document No. RR-304741, which will expire on June 30, 2013, but may be extended for an additional five years to expire on June 30, 2018.

APPROVED: JAN I. GOLDSMITH, City Attorney

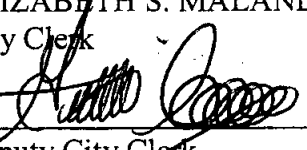
By


Brock L. Ladewig
Deputy City Attorney

BLL:mcm
05/02/2011
Or.Dept:Real Estate Assets Dept.
PL#2010-04532

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 28 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 7.6.11

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on June 28, 2011, by the following vote:

YEAS: LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, ZAPF.

NAYS: NONE.

NOT PRESENT: EMERALD & ALVAREZ.

RECUSED: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

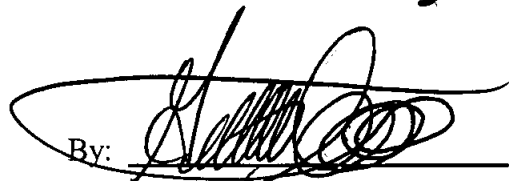
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-306889, approved by the Mayor of The City of San Diego,
California on July 6, 2011.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy