

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

This second amendment to an agreement is made and entered into this ____ day of _____, 2007, by and between the County of San Mateo, a political subdivision of the State of California (hereinafter, "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 a California municipal corporation (hereinafter "City");

WITNESSETH

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

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

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

WHEREAS, County and PHS have entered into a Second Amendment, extending the Agreement and PHS land lease through June 30, 2011 and amending the PHS payment schedule; and

WHEREAS, City and County wish to amend the City Agreement as set forth below to be consistent with the Second Amendment with PHS/SPCA attached hereto as Exhibit A;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. CITY'S RESPONSIBILITIES. Section B, Subparagraph 4. **Payments** previously deleted and replaced in its entirety in the First Amendment, is hereby further deleted and the following shall be substituted in lieu thereof:

"4. **Payments**. City shall pay to the County prior to January 1st of each fiscal year, and following the receipt of an invoice from County, the City's percentage share of the net program cost of the Animal Control Program. This net program cost shall be determined by the County and shall be equal to the cost of the contract between the County and County Contractor plus the cost of the County administering licensing collection and Animal Control Services Program, minus any program revenue received by County or County Contractor as described in Section D, Paragraph 5. County and City's percentage share shall be based on service costs. County will calculate a percentage breakdown annually, based on service reports provided by County Contractor. Percentage distribution for a given year will be based on an average of service costs over the three calendar years prior to the year in question. Exhibit "B", attached and incorporated by this reference herein, details percentage distribution for FY 2003-04. Percentage distributions for 2007, 2008, 2009, 2010 and 2011 will be distributed by County to Cities by March 1st of the given year.

Base costs to be paid to County Contractor by the County and Cities are as follows:

<u>Fiscal Year</u>	<u>Amount</u>
2007-08	\$5,076,951
2008-09	\$4,750,000
2009-10	\$4,987,500
2010-11	\$5,236,875

2. **GENERAL PROVISIONS** Section D, Subparagraph 8. Term and Effective Period previously deleted and replaced in its entirety in the First Amendment, is hereby further deleted and the following shall be substituted in lieu thereof:

“8. **Term and Effective Period.** This amended Agreement shall be effective the period from July 1, 2006 through June 30, 2011. All services are subject to the terms and conditions of this Agreement.”

3. **GENERAL PROVISIONS** Section D, Subparagraph 12. Hold Harmless is hereby deleted and replaced in its entirety and the following shall be substituted in lieu thereof:

“12. **Hold Harmless.** 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 or death of any person or damage to any property of any kind whatsoever and 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 City, its officers, employees and agents from and against any and all claims, suits or actions

of any kind brought for or on account of injuries to or death of any person or damage to any property of any kind and to whomsoever belonging which arise out of the performance or non performance of County's obligations under this Agreement and which result from the actively negligent or wrongful acts of County, its officers or employees. This provision requiring County to hold harmless, indemnify and defend City shall expressly not apply to claims, losses, liabilities or damages arising from actions or omissions, negligent or otherwise, of Peninsula Humane Society, or any other independent contractor, or its officers, employees or agents, under its contract with the County.

In the event of concurrent negligence of the County, its officer or employees, and the 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 costs which arise out of the terms, conditions, covenants or responsibilities of this agreement shall be reapportioned according to the California theory of comparative negligence.

Finally, the parties acknowledge that with respect to activities performed by PHS in the incorporated areas, the County serves solely as a Contract Administrator and solely with respect to the specific obligations contained within this Agreement and the agreement between the County and PHS. Accordingly, in the event the County or the Cities are sued and the suit is

related in any manner to actions taken by PHS solely in a particular City or Cities that are party to this agreement, those particular City or those Cities will hold harmless, indemnify and defend the County, and any other City that is a party to this agreement, that is named as a defendant in that suit. In the event a City or Cities that are a party to this agreement are sued and the suit relates in any manner to actions taken by PHS solely in the unincorporated area the County, the County will hold harmless, indemnify and defend the City or Cities named as a defendant in that suit.

4. County Contractor Responsibilities. Exhibit C (“Contractor Responsibilities”), Section 11 (“Excluded Services”) of the Services Agreement is amended to add the following exclusion to the Services Agreement to render it consistent with the parties’ intent as of (and since) June 17, 2003:

- Enforcement of State law and regulations related to the prevention of cruelty to animals.

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

6. Date of Adoption. This Second Amendment shall be deemed to have been adopted on the date this Second Amendment has been executed by the County and all of the Cities.

7. Condition Precedent. This amendment will become effective only after the County and PHS/SPCA negotiate and adopt an amendment to their June 17, 2003 Agreement that is consistent with this Second Amendment. In the event that the County (acting in good faith) and PHS/SPCA are unable to negotiate and adopt an amendment to

their June 17, 2003 Agreement that is consistent with this Second Amendment, this Second Amendment becomes void.

8. This Second Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to the City/County Agreement for Animal Control Services to be executed by their duly authorized representatives on the day and year first written above.

Dated: _____

COUNTY OF SAN MATEO

ATTEST:

By: _____

Clerk of the Board

Dated: _____

TOWN OF ATHERTON

ATTEST:

By: _____

Town of Atherton, Clerk

Dated: _____

CITY OF BELMONT

ATTEST:

By: _____

City of Belmont, Clerk

Dated: _____

CITY OF BRISBANE

ATTEST:

By _____

City of Brisbane, Clerk

Dated: _____

CITY OF BURLINGAME

ATTEST:

By _____

City of Burlingame, Clerk

Dated: _____

TOWN OF COLMA

ATTEST:

By _____

Town of Colma, Clerk

Dated: _____

CITY OF DALY CITY

ATTEST:

By _____

City of Daly City, Clerk

Dated: _____

CITY OF EAST PALO ALTO

ATTEST:

By _____

City of East Palo Alto, Clerk

Dated: _____

CITY OF FOSTER CITY

ATTEST:

By _____

City of Foster City, Clerk

Dated: _____

CITY OF HALF MOON BAY

ATTEST:

By _____

City of Half Moon Bay, Clerk

Dated: _____

TOWN OF HILLSBOROUGH

ATTEST:

By _____

Town of Hillsborough, Clerk

Dated: _____

CITY OF MENLO PARK

ATTEST:

By _____

City of Menlo Park, Clerk

Dated: _____

CITY OF MILLBRAE

ATTEST:

By _____

City of Millbrae, Clerk

Dated: _____

CITY OF PACIFICA

ATTEST:

By _____

City of Pacifica, Clerk

Dated: _____

TOWN OF PORTOLA VALLEY

ATTEST:

By _____

Town of Portola Valley, Clerk

Dated: _____

CITY OF REDWOOD CITY

ATTEST:

By _____

City of Redwood City, Clerk

Dated: _____

CITY OF SAN BRUNO

ATTEST:

By _____

City of San Bruno, Clerk

Dated: _____

CITY OF SAN CARLOS

ATTEST:

By _____

City of San Carlos, Clerk

Dated: _____

CITY OF SAN MATEO

ATTEST:

By _____

City of San Mateo, Clerk

Dated: _____

CITY OF SOUTH SAN FRANCISCO

ATTEST:

By _____

City of South San Francisco, Clerk

Dated: _____

TOWN OF WOODSIDE

ATTEST:

By _____

Town of Woodside, Clerk