

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # \*B-4

Urgent

Routine

AGENDA DATE June 18, 2013

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of Agreements with Wags and Whiskers Rescue, a Non-Profit Animal Service Organization, and the City of Modesto for Interim Use of the Former Animal Shelter at 2846 Finch Road, Modesto, California; and, Authorization for the Project Manager to Complete Negotiations for the Pending Vandalism Insurance Claim and Make Necessary Repairs and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the Lease Agreement with Wags and Whiskers Rescue of Modesto, California, for the interim reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California 95354, to provide animal rescue and adoption services, subject to the County rendering the Premises habitable using insurance proceeds from the pending vandalism claim.
2. Authorize the Chief Executive Office, in coordination with County Counsel, to negotiate, finalize and execute an Amendment to the Memorandum of Understanding Between the County of Stanislaus and the City of Modesto Relating to Shelter Capital Costs and the Disposition of the Finch Road Animal Shelter.

FISCAL IMPACT:

On March 22, 2011, the Board of Supervisors approved the Final Acceptance of the Design-Build Construction of the Thomas W. Mayfield Regional Animal Services Facility located at 3647 Cornucopia Way, Modesto, California 95358. The new location of the Stanislaus Animal Services Agency, a joint effort between the County and its five partner cities of Modesto, Ceres, Hughson, Patterson and Waterford, was designed and constructed to meet the needs of its members and the community in

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2013-294

On motion of Supervisor Monteith, Seconded by Supervisor Withrow,  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 2

**STAFF RECOMMENDATIONS: (Continued)**

3. Authorize the Project Manager, in coordination with Risk Management and Counsel, to negotiate and settle the insurance claim resulting from theft and vandalism at the Finch Road Facility.
4. Authorize the Project Manager to take all necessary actions, negotiate and sign contracts, work authorizations, and purchase orders for professional and construction services to perform repairs resulting from theft and vandalism at the Finch Road Facility.
5. Direct the Auditor-Controller to increase revenue and appropriations by \$53,939 from Insurance Proceeds in the Chief Executive Office County Facilities Budget to perform repairs to 2846 Finch Road, Modesto, California.

**FISCAL IMPACT: (Continued)**

providing animal shelter and related animal services. Currently, the Stanislaus Animal Services Agency on Cornucopia Way performs pet adoptions, spay and neuter assistance, licensing, investigations, veterinary care and low cost rabies vaccinations. The new building also assists the County and its partner cities with providing a well maintained, state of the art facility that aids in support of field operations and services.

As a result of constructing the new facility, the Former Animal Shelter located at 2846 Finch Road, Modesto, California 95354, was vacated and has remained vacant since January 17, 2011 when the Thomas W. Mayfield Regional Animal Services Facility opened its doors to the public at its new location, providing a safe haven to over 300 animals. The County has maintained the Finch Road site since the move with funding allocated from the Chief Executive Office County Facilities budget including the costs of providing services for site utilities, electronic security monitoring and weed abatement.

In June 2012, the 2846 Finch Road, Modesto facility was vandalized by the theft of copper wire throughout the facility including disconnection of the main service panels, disconnection of the burglar alarm system and harvesting of copper wire throughout the structures. Destructive vandalism to the plumbing system, animal kennels and fencing also occurred. Staff is finalizing negotiations with the County insurer for the loss resulting from the vandalism event. The insurer has provided the County with an initial cash value payout from insurance proceeds in the amount of \$53,939. The work needed to fix all damage to the facility from this vandalism event will exceed the initial payout. The County will perform the repairs and will be reimbursed by the insurer for the actual costs of this repair work, less a \$20,000 property insurance deductible.

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 3

The Memorandum of Understanding (MOU) between Stanislaus County and the City of Modesto Relating to Shelter Capital Costs and the Disposition of the Finch Road Animal Shelter (Resolution 2009-547) fully executed on November 12, 2009, Section B, states that with respect to the disposition of the property on Finch Road, the City and County mutually agree after discontinuation of the animal shelter use at the Finch Road Facility to allow a 501(c)(3) nonprofit agency to operate an animal rescue program, adoption center, or other program for the benefit of abandoned and unwanted animals. If no such 501(c)(3) nonprofit agency uses the facility, the County would then move forward with disposition of the site as outlined in the MOU.

As a result, the County issued a Request for Proposals for a non-profit operator and one proposal was received from Wags and Whiskers, a local non profit animal rescue organization. Wags and Whiskers Rescue, has agreed to terms of reuse of the facility for an initial term of three (3) years with a two (2) year renewal option and have agreed to pay all costs of utilities, security and site grounds keeping. Chief Executive Office staff have presented terms of this interim use Lease Agreement to the City County Liaison Committee and with the City of Modesto Staff. We seek a partnership approach to keeping the major systems of the Finch Road Facility, including roofing, mechanical, plumbing, irrigation and storm drainage in good and operable condition throughout the term. Terms of the Lease Agreement call for the County and City of Modesto to mutually contribute to the costs of major systems maintenance in the amount of \$5,000 per party annually (\$10,000 aggregate annually). This contribution from the County and City is non-cumulative and will not be carried over annually if unused for repairs by the tenant. An Amendment to the Memorandum of Understanding (MOU) between the County and City is being negotiated and drafted between the County and City executive teams, including the County Counsel and the City Attorney. This Amendment to the MOU is also subject to approval by the City Council of the City of Modesto.

At the end of the term of this Lease Agreement, the County and City will seek to clear and perform disposition of the site in order to prepare the site for public sale. All future project decisions will be brought to the Board of Supervisors for review and approval.

## **DISCUSSION:**

### Project Background

In 1956, Stanislaus County and the City of Modesto were granted the parcel on Finch Road for use as a future facility that provided animal services functions for the community. Under an Agreement dated February 28, 1972 between Stanislaus County and the City of Modesto, the parcel was later granted by official recorded grant deed on November 1, 1972, to Stanislaus County in fee simple for construction and operation of

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 4

an animal services "pound". In 1973, the Facility at 2846 Finch Road, Modesto was constructed to facilitate this purpose.

A Needs Assessment was performed in 2007 detailing the need for more public education, expanded foster care programs, support for development of non-County shelter services and animal adoption opportunities within the community. Additionally, the County moved forward with planning for the replacement of the Finch Road Facility to meet the needs of the County and its partner cities, including the City of Modesto as the County's largest partner city, in managing the growing animal population. Stanislaus County broke ground on a new Animal Services Agency site on Cornucopia Way in Ceres, California in 2008 and completed construction of a new state-of-the-art facility in early 2011. An Animal Services Agency Joint Powers Authority (JPA) was created with the County's partner cities in 2009 for ongoing operational cost, facility costs and servicing of construction-related debt of the new Thomas W. Mayfield Regional Animal Services Facility to provide for a safe boarding capacity to over 300 animals.

On March 22, 2011, the Board of Supervisors approved the Final Acceptance of the Design-Build Construction of the Thomas W. Mayfield Regional Animal Services Facility located at 3647 Cornucopia Way, Modesto, California 95358. The new home of the Stanislaus Animal Services Agency, a joint effort between the County and its five partner cities of Modesto, Ceres, Hughson, Patterson and Waterford, was designed and constructed to meet the needs of its members and the community in providing animal shelter and related animal services.

As a result of commissioning the new facility, the Former Animal Shelter located at 2846 Finch Road, Modesto, California 95354, was vacated and has remained vacant since January 17, 2011 when the Thomas W. Mayfield Regional Animal Services Facility opened its doors to the public. The County has maintained the Finch Road site since the move with funding allocated from the Chief Executive Office County Facilities budget including the costs of providing services for weed abatement, site utilities, electronic security monitoring and general property maintenance costs of the vacant property.

Last year, the Finch Road Facility was severely vandalized through the theft of the electric service main copper wire throughout the main structure and former adoption trailer. Thieves went to the extent of disconnecting the main electric service panels, disconnection and theft of the burglar alarm, stealing kennel gates, plumbing fixtures, laundry water heater and major destruction of the air conditioning and ventilation systems. In response to the major theft at the Finch Road Facility, the County has contracted with Cypress Private Security for on-site security monitoring in an effort to protect the Facility from further vandalism. The County continues to carry the cost of site

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 5

security, site maintenance, utilities and other site services with an average monthly cost of \$7,200 paid from existing appropriations in the Chief Executive Office County Facilities Budget. With Board of Supervisors approval of a Lease Agreement with Wags and Whiskers Rescue, the County could lower its cost exposure by having a tenant that occupies the site, maintains the Facility and upkeep the grounds. The County will continue with site security and site maintenance while repairs are made to the Facility, with costs paid from existing appropriations in the Chief Executive Office County Facilities Budget.

Chief Executive Office staff is currently negotiating with its Insurer for payment of repairable items as a direct result of the theft and vandalism. Only after the repairs are made would the Finch Road Facility be ready for occupancy. The use of the Facility will not change as a result of this Lease Agreement.

#### Recent Actions

The Memorandum of Understanding (MOU) between Stanislaus County and City of Modesto Relating to Shelter Capital Costs and the Disposition of the Finch Road Animal Shelter (Resolution 2009-547) fully executed on November 12, 2009, Section B, states that with respect to the disposition of the property on Finch Road, the City and County mutually agree after discontinuation of the animal shelter use at the Finch Road Facility to allow a 501(c)(3) nonprofit agency to operate an animal rescue program, adoption center, or other program for the benefit of abandoned and unwanted animals. If no such 501(c)(3) nonprofit agency uses the facility, the County would then move forward with disposition of the site.

The cost of site utilities during full operation of the facility prior to 2011 by the Animal Services Agency was averaging \$5,352.43 per month. This figure excludes the actual operational and maintenance costs of the Facility. The County has been solely responsible for the operational cost and has worked for sometime to seek an acceptable re-use/surplus plan.

The Chief Executive Office issued a Request for Proposals (RFP) on December 19, 2012 for reuse of the 2846 Finch Road Facilities. Only one Proposal was received on the closing date of January 16, 2013, from Wags and Whiskers Rescue of Modesto, California.

Stanislaus County and the City of Modesto Executive Committee, and its representative staff, have reviewed the Proposal in its entirety. An internal staff review committee comprised of two members of the County Chief Executive Office, the Animal Services Agency Director, and two members of the City of Modesto Finance Department, evaluated the Proposal and performed multiple interviews with the Board of Wags and

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 6

Whiskers Rescue. On April 22, 2013, the County-City RFP review team determined that the Wags and Whiskers Rescue proposal, evaluated on its merits and value, had been prepared consistent with the criteria in the RFP. Additionally, based on the information provided by Wags and Whiskers Rescue, the County-City RFP evaluation team was unanimous in recommending Wags and Whiskers Rescue as the successful bidder with a responsive proposal.

Wags and Whiskers Rescue proposes to use the facility for rescue, rehabilitation and re-homing of abandoned animals. Funding for Wags & Whiskers Rescue is generated from private adoptions of rescued animals and through community-based donations. The nonprofit is considering providing animal training, animal boarding and other retail components as part of its overall strategy for reuse of the Finch Road Facility and generates income for the cost of operations and facility upkeep. Wags and Whiskers Rescue expects to hold about 100 animals at the Facility at any one given time.

In calendar year 2012, Wags and Whiskers Rescue provided for the adoption of 198 animals from the Stanislaus County Animal Services Agency and a total of 502 animals found new, safe homes through the organizations adoption network. On average, this number of animals rescued by Wags and Whiskers Rescue from the Animal Services Agency represents less than two percent of the total animal euthanasia over recent fiscal years. Community based support to rescue, adopt and responsibly provide owners for this pet population, is drastically needed to aid the Animal Services Agency in reducing the number of animals that are euthanized within the facility. Through the analysis of the cost of operation of the current Animal Services Agency, it is anticipated that the positive benefit of adoption and rescue of 200 animals from euthanasia annually would result in a direct annual savings of \$2,861 to the operation of the Animal Services Agency. This opportunity to reuse a vacant facility to create a government-community based approach within Stanislaus County is beneficial to supporting and endorsing a community based effort to reducing animal euthanasia rates.

The reuse of the Finch Road Facility has the ability to reduce Stanislaus County's direct property holding costs, while allowing a 501(c)(3) nonprofit animal service provider to provide a community based approach to reducing the animal euthanasia rates. Additionally, the County would seek to dispose of the property at the end of year three (3), or with approval by the Board of Supervisors, at the end of five (5) years through soliciting interest in a private sale of the real property. This interim, transitional period is expected to allow the value of the property to increase over time. Given the age and condition of the facility, a long term use is not considered feasible without a significant capital outlay, funding for which is not available.

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 7

Stanislaus County will act as the Lessor of the Finch Road Facility, as it is the legal owner of the property in fee simple. Key terms of the recommended Lease Agreement for reuse of 2846 Finch Road, Modesto are summarized below:

- Parties:** Stanislaus County  
Wags and Whiskers Rescue
- Premises:** 2846 Finch Road, Modesto, California APN 039-010-002
- Term:** Three (3) years from repair date, anticipated August 1, 2013  
Two (2) year option to be exercised by County for a total of five (5) years from the date of Lease commencement
- Payment:** \$1 annually for year one (1), \$1,200 annually for year two (2) through year five (5)
- Security Deposit:** \$600 paid by Wags and Whiskers Rescue and held by County
- Utilities:** Paid by Wags and Whiskers Rescue
- Maintenance:** Excepting major systems repair allowance of \$10,000 annually split between Stanislaus County and City of Modesto, Wags and Whiskers to maintain facility and site in good repair
- Performance:** Wags and Whiskers Rescue to guarantee beginning in year two (2) a minimum of 200 rescue "pulls" from Stanislaus County Animal Services Agency and 500 adoptions within its foster adoption network and from within the Finch Road Facility

Staff is seeking approval from the Board of Supervisors to negotiate, finalize and execute an Amendment to the Memorandum of Understanding Between the County of Stanislaus and the City of Modesto Relating to Shelter Capital Costs and the Disposition of the Finch Road Animal Shelter. If approved, this Amendment would limit use of the site to five (5) years total from the occupancy date of August 1, 2013, with a lease evaluation reopener at the end of year three (3) of the term. This interim solution for the Finch Road Facility will allow the County to drastically reduce its holding and site management costs for the vacant facility with actual expenditures averaging \$7,200 per month from the Chief Executive Office budget. Lease terms require the annual allocation of \$5,000 each (\$10,000 aggregate) from Stanislaus County and the City of Modesto for repair and maintenance of major systems at the Finch Road Facility. The major systems include HVAC, major electrical, roof, plumbing, irrigation, domestic sewer and storm water systems. Any cost above \$10,000 per year to repair the major

Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 8

systems of the facility would be paid by Wags and Whiskers Rescue. The major systems repair allocation is non-cumulative and, if unused, would not be carried over. Wags and Whiskers Rescue's failure to perform a major systems repair could result in default or termination of the Lease Agreement.

At the end of the lease term or in the event of default, the County and City will coordinate the disposition and sale of the property pursuant to the Amendment to the Memorandum of Understanding Between the County of Stanislaus and the City of Modesto.

#### Facility Insurance Repairs

Stanislaus County will coordinate with its insurer to repair the Finch Road Facility from its current vandalized condition resulting from the theft event in June 2012. The electrical, heating, ventilation and air conditioning, roofing and plumbing systems will be repaired as efficiently and effectively as possible. The County is seeking to fund these repairs from insurance proceeds and will seek to minimize any cost in turning over the facility to Wags and Whiskers Rescue. The County will expect to forego a loss deductible of \$20,000 as part of this repair work.

#### **POLICY ISSUES:**

Approval of this item supports the Board of Supervisors' priorities of A Safe Community, A Health Community, Effective Partnerships and Efficient Delivery of Public Services by increasing opportunities for community-based effort to lowering the animal euthanasia rate within Stanislaus County. This important partnership, involves a partnering with a nonprofit organization, citizens of the community and local government, will assist in the rescue and adoption of animals that may of otherwise have been euthanized. Additionally, this opportunity may create and further support a model for community-based animal services organizations to better address concerns of euthanasia, responsible pet ownership and animal care among our residents.

This effort will also substantially reduce the County's direct cost and liability exposure for maintaining the vacant facility at 2846 Finch Road, Modesto. This effort will also allow for future property development opportunities at the end of the proposed transitional use period.

#### **STAFFING IMPACT:**

Staff from the Chief Executive Office-Capital Projects, Risk Management and General Services Agency will coordinate close out of the insurance claim and perform repairs paid for with insurance proceeds. Chief Executive Office and General Services Agency



Approval of Lease Agreement for Reuse of the Former Animal Shelter located at 2846 Finch Road, Modesto, California by Wags and Whiskers Rescue, a Non-Profit 501(c)3 Animal Service Organization; Authorize the Project Manager to Negotiate and Settle the Insurance Claim and Perform All Necessary Actions to Repair the Finch Road Facility; and Related Actions

Page 9

staff will manage the lease and coordinate or perform major systems repairs where applicable.

**CONTACT PERSON:**

Patricia Hill Thomas, Chief Operations Officer. Telephone: (209) 525-6333

# County of Stanislaus: Auditor-Controller

## Legal Budget Journal

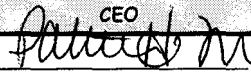

Database  
Set of Books

FMSDBPRD.CO.STANISLAUS.CA.US.PROD  
County of Stanislaus

Balance Type	Budget
Category	* List - Text Budget - Upload
Source	* List - Text CEO CRA
Currency	* List - Text USD
Budget Name	List - Text LEGAL BUDGET
Batch Name	Text
Journal Name	Text JV CEO100248
Journal Description	Text Establish rev and approp for insurance claim facilities budget
Journal Reference	Text
Organization	List - Text Stanislaus Budget Org

Upl	Fund	Org	Acc't	GL Proj	Loc	Misc	Other	Debit		Credit		Period	Line Description
								incr appropriations decr est revenue (format > number > general)	decr appropriations incr est revenue	Upper case MMM-YY List - Text	Text		
	4	7	5	7	6	6	5						
R	0100	0016091	62400	0000000	000000	000000	000000	53939					increase appropr
R	0100	0016091	41400	0000000	000000	000000	000000		53939				increase revenue
<b>Totals:</b>								53939	53939				

**Explanation:** Increase revenue and appropriations for insurance claim - for Finch Road

<b>Requesting Department</b>		CEO	<b>Data Entry</b>		<b>Auditors Office Only</b>	
Christine Almen						
Signature	Signature		Keyed by	Prepared By	Approved By	
##	6/13/13				6-13-13	
Date	Date		Date	Date	Date	

## LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into in the City of Modesto, State of California, on the 19th day of June, 2013 by and between the County of Stanislaus, a political subdivision of the State of California and a body corporate and politic, hereinafter referred to as "Lessor", and Wags and Whiskers Rescue, hereinafter referred to as "Lessee", for and in consideration of the Premises as hereinafter defined, and the mutual promises, covenants, and agreements as are hereinafter set forth.

1. Premises – Lessor hereby leases to Lessee, and Lessee hereby hires from Lessor, that certain premises in the County of Stanislaus, commonly known as 2846 Finch Road, Modesto, CA, more particularly described as APN 039-010-002, primarily consisting of 12,633 square feet of office space and animal kennels situated on 4.531 acres of total site area, including all improvements therein or to be provided under the terms of this Lease, (the "Premises"), more fully illustrated in Exhibit A attached .
2. Term – The base term ("Term") of this Lease shall be for a period of three (3) years (the "Initial Term") commencing at 12:01 A.M. on August 1, 2013 ("Commencement Date"), and terminating at 11:59 P.M. on July 31, 2016 ("Expiration Date") with a two (2) year renewal option to renew after a performance review to be approved and mutually agreed to by the Parties (the "Extended Term"). Lessor shall hold exclusive right to granting the extension of Term for two (2) year renewal option. The total Lease Term shall not exceed five (5) years. Lessee shall wholly waive and release any rights to the Premises upon the expiration of the Initial Term, or upon the expiration of the Extended Term, or in the event of its default or other termination of the Agreement. In the event the County elects not to renew the Lease after the Initial Term, Lessee shall have three months to vacate the Premises.
3. Payment – All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent"). Lessee agrees to pay to Lessor and Lessor agrees to accept as payment for the use and possession of the Premises the sum of \$1.00 per month during the period from August 1, 2013 to July 31, 2014. Lessee agrees to pay to Lessor and Lessor agrees to accept as payment for the use and possession of the Premises the sum of \$100.00 per month commencing on August 1, 2014 and extending through the remainder of the Initial Term of the Lease, or, if extended, the Extended Term of the Lease. Payments shall be made monthly on the first (1<sup>st</sup>) day of the month and shall be considered late if not received by the seventh (7<sup>th</sup>) day of the month. Each late payment shall accrue a 10% penalty.
4. Security Deposit – Lessee shall deposit the amount of \$600.00 as a Security Deposit with the Lessor. If Lessee fails to pay Rent or otherwise defaults on this Agreement, Landlord use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. Lessor will inspect and fully document the condition of the Premises as of the Commencement Date and as of the Expiration Date or Termination Date. Within 21 days of the expiration or termination of this Agreement, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest, or to be prepayment for any monies to be paid by Lessee under this Lease.

5. Use of the Premises – Lessee acknowledges and agrees that its use of the Premises shall be for the sole purpose of operating a non-profit animal adoption and rescue organization. Lessee shall not use or permit said Premises to be used for any other purpose. Lessee acknowledges and agrees that any other use of the premises by it shall be considered a default of this Lease. Lessee shall keep the Premises in clean and good repair during its use. Lessee shall not permits its use of the Premises to create damage, waste or a nuisance, or to disturb occupants of or cause damage to neighboring premises or properties.
  
6. Repairs to Premises – Lessor has been advised that the County is undertaking the following repairs to the Premises, as more specifically set forth in Exhibit A, attached hereto for reference:
  - a. Electrical main service reconnecting
  - b. Electrical service to HVAC units
  - c. (4) new HVAC units
  - d. Repair or replace rooftop exhaust fans
  - e. New security camera set-up
  - f. Replace 27 kennel gates
  - g. Repair exterior plumbing fixtures
  - h. Replace 100 gallon water heater
  - i. Repair exterior structure lighting and wiring
  - j. Facility door and rekey
  - k. Demolish existing portable trailer (contents of trailer may be relocated and re-used by Lessee at its sole effort and expense)
  - l. Roof patching

Lessor shall additionally make all reasonable efforts to repair the Premises to an habitable condition for business operations use by Lessee as part of a pending property insurance settlement between the County and its insurer. This Agreement is entered into subject to said repairs. Should Lessor determine in its sole discretion that performance of the said repairs or any other improvements to the Premises is infeasible or impractical, Lessor may terminate this Agreement for convenience with no further obligation to Lessee.

Upon the completion by Lessor of the reasonable repairs to the major systems set forth above, Lessor agrees to offer and Lessee agrees to accept the Premises in as-is condition. Lessor and Lessee shall mutually agree to the written provisions of this Agreement prior to completion of these major system repairs by Lessor. Lessor has the right to immediately terminate this Lease upon violation of the above-described covenants.

7. Condition of Premises – Lessee acknowledges that: (a) it has received copies of the Asbestos and Lead Based Paint Survey prepared by Kleinfelder Inc. on April 19, 2013 and the Asbestos Survey Reports prepared by J.W. Mack Consulting on September 5, 2013 and the Pre-Renovation Asbestos and Lead Survey Report prepared by RGA Environmental Inc. on December 18, 2007; (b) it has been advised by Lessor to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC, plumbing, security, environmental aspects, and compliance with applicable requirements and the Americans with Disabilities Act), and their suitability for Lessee’s intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and, except from the matters described in Section 6 above, Lessee assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) except as required by Section 6 above, Lessor shall be under no further obligation whatsoever to construct, remodel, refurbish or otherwise add to the improvements of the Premises beyond its condition on the date of execution of this Lease, and (e) neither Lessor nor Lessor’s agents have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.
8. Utilities – Lessee shall pay for all water, sewer, gas, heat, electricity, telephone, data or internet, electronic security monitoring and all other services supplied to the Premises for those areas which Lessee is leasing.
9. Permits – Lessee shall procure all permits, licenses and approvals for use of the Premises for operating a non-profit animal adoption and rescue organization. Lessee shall remain in good standing as a 501(c)(3) organization throughout the Term of the Agreement.
10. Maintenance and Repairs – Parties mutually agree to a joint-responsibility approach to maintenance and repair of major systems of the Premises.
  - a. Major systems of the Premises are defined as the heating, ventilation and air conditioning system, electrical, roofing, domestic water (supply), domestic sewer (waste), irrigation and storm water drainage systems. In addition to the repairs set forth in Section 6 above, the Parties agree Lessor shall spend up to a maximum of \$10,000 annually during the Term of the Agreement toward major system repairs needed. If major system repairs exceed \$10,000 in any one year, such necessary repairs shall be performed by Lessee at its sole cost and said repair shall be performed within 30 days of the system failure or documented need for repair by either Party. If Lessee elects not to complete the necessary repairs to keep the Premises in good condition, Lessee shall notify Lessor in writing within thirty (30) days of the occurrence of any major system failure and the lease will terminate within (30) days from the issuance of such notice by Lessee. Lessee’s failure to repair or give written notice of intent to not repair will be cause for termination. Lessee has the option to stop utilization and shut down portions of the Premises in lieu of performing major systems repairs and continue operating in the habitable portion of the facility without terminating the Agreement. Parties agree, in event of any perceived conflict with adopted California Building Code, adopted California Health & Safety Code, or any other applicable regulation, that the Lessor, and its representatives, shall solely determine whether the Premises can be occupied by Lessee.
  - b. Lessee agrees to maintain the Premises in good and safe condition, including all interior surfaces of walls, windows, plate, glass, doors, and ceilings, and all fixtures or equipment installed by Lessee. Lessee shall maintain the grounds of the Premises, including

performance of weed abatement and landscaping consistent, at minimum, with the regulation of the City of Modesto Fire Department governing noxious growth. Lessee promises to surrender the Premises at termination of this Agreement in the same condition as received, except for normal wear and tear and except changes authorized by Lessor. Lessee agrees to make no repairs at the expense of Lessor without Lessor's prior written consent.

11. Alterations – Lessee shall not make, or suffer to be made, any alterations of the Premises or any part therefor without the prior written consent of Lessor, and any additions to, or alterations of, said Premises, except moveable furniture and trade fixtures, shall become at once a part of the realty and belong to Lessor.
12. Public Works Projects – Lessor and Lessee acknowledge and agree that all improvements to or within the Premises constitute Public Works projects, and all applicable provisions of the California Public Contract Code apply to alterations constructed within or to the Premises, including prevailing wage requirements. Pursuant to Public Contract Code Section 22010 et seq., all contracts for alterations in excess of the statutory limit shall be competitively bid and awarded to the lowest responsible bidder in accordance with applicable provisions of the Public Contract Code. Lessee shall abide by all applicable laws and regulations relating to the construction of alterations on or within the Premises including applicable provisions in the Labor Code relating to the payment of prevailing wages.
13. Waste or Nuisance – Lessee shall not commit or permit the commission by others of any waste on the Premises; Lessee shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 of the California Civil Code; and Lessee shall not use or permit the use of the Premises for any unlawful purposes.
14. Taxes and Other Charges – It is understood that the property interest created by this Lease may be subject to property taxation and that Lessee will be subject to the payment of any property taxes levied on such interest. Lessee shall pay all taxes, assessments or other charges levied or made as a result of Lessee's possession or use of the Premises without contribution by Lessor.
15. Entry by Others – Lessor shall have the right to post signs forbidding trespass by persons other than Lessee or its employees, or by Lessor and its representatives after proper written or verbal notice, upon the Premises, and to deny entry upon the Premises to unauthorized persons.
16. Inspection by Lessor – Lessee shall permit Lessor's agents, representatives or employees to enter the Premises at all reasonable times for the purposes of inspecting the Premises to determine whether Lessee is complying with the terms of this Lease. Lessor shall provide written and/or verbal notice of 24 hours prior to Lessor's Performance of Lessee inspection. Lessor reserves the right to inspection in case of emergency, building hazard, default or termination without written or verbal notice to Lessee.
17. Performance of Lessee – Commencing year two (2) of the Agreement, Lessee will guarantee the minimum number of adoptions rescue "pulls" from the Stanislaus County Animal Services Agency at 200 animals annually and shall exceed a total amount of rescued/adopted animals within its partner foster network and from the Finch Road Facility of a total 500 animals annually. Lessee shall provide an annual performance and

operations report with submittal, at minimum, of its financial information and animals/rescued adopted from the Premises and its foster network.

18. Hold Harmless – Lessee agrees to indemnify and hold harmless Lessor from any and all claims, liability, loss, damage or expense resulting from Lessee's occupation and use of the Premises, including court costs and attorney's fees. Lessee has reviewed Section 7 of this Agreement, and acknowledges the presence of Presumed Asbestos Containing Materials (PACM), Asbestos Containing Materials (ACM) and lead within the structure of the Premises. If Lessor is involuntarily made a party defendant to any litigation concerning this Lease or the premises by reason of any act or omission of Lessee, then Lessee shall hold harmless Lessor from all liabilities by reason thereof, including reasonable attorney's fees and costs incurred by Lessor in such litigation.
19. Insurance – Lessee will furnish Lessor with proof of insurance issued by an insurer approved by Lessor showing the coverage to be in force and showing Lessor as a named insured for all periods of the Term, insurance policies with coverage at least as broad as follows: General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per occurrence.

Lessee shall provide Lessor with Certificates of Insurance showing the required coverage's are in effect and naming Lessor as additional insured. In addition, certificates must provide Lessor with 30 days prior written notice of any cancellation. Insurance policies shall contain an endorsement containing the following terms:

19.1 Stanislaus County, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured.

19.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

19.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to Owner thirty (30) days in advance of the effective date thereof.

Lessor shall not be required to deliver possession of the Premises until Lessee complies with its obligation to provide evidence of insurance.

20. Assignment – Lessee shall not assign, sublet, encumber or otherwise transfer this Lease or any right or interest in the Premises, without the prior written consent of the Lessor. Without the consent of the Lessor, any attempted assignment or transfer of this Lease or any interest therein, either by voluntary or involuntary act of Lessee or by operation of law or otherwise, shall, at the option of Lessor, terminate this Lease.
21. Severability – The invalidity of any portion of this Lease shall not affect the remainder. Any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

22. Entry – Lessor reserves the right to enter the Premises at reasonable times to carry out any building management, major systems building repair or any business purpose in or about the Premises, without any abatement of rent.
23. Default by Lessee – All covenants and agreements contained in this Lease are declared to be conditions of this Lease. Should Lessee default in the performance of any condition or agreement contained in this Lease and should such default continue for ten (10) days after written notice thereof by Lessor to Lessee, Lessor may immediately terminate this Lease and re-enter and regain possession of the Premises in the manner then provided by the laws of unlawful detainer in the State of California then in effect.
24. Notices – Notices desired or required to be given by this Lease or by any law now or hereinafter in effect, may be given by enclosing the same in a sealed envelope addressed to the party for whom intended and by depositing such envelope, with postage prepaid, in the United State Post Office or any substation thereof, or any public letter box, and any such notice and the envelope containing the same shall be addressed to Lessor as follows:

Wags and Whiskers Rescue  
1700 McHenry Avenue, Suite 65N-155  
Modesto, CA 95350

or such other place as may hereinafter be designated in writing by Lessor and the notices and envelopes containing the same to the Lessee shall be addressed as follows:

Stanislaus County-Chief Executive Office  
1010 10th Street, Suite #6800  
Modesto, CA 95354

In addition to providing all required Notices as set forth above, Lessee may contact Patricia Hill Thomas or Josh Ewen at (209) 525-4380 as its point of contact.

25. Governing Law – This Lease shall be governed by and construed in accordance with the laws of the State of California.
26. Failure to Vacate – Lessee agrees to vacate Premises within at the expiration of the lease term or upon the termination of this Lease, whichever occurs first. If the County elects not to renew this Lease after the Initial Term, Lessee shall have three months to vacate the Premises. Upon any other termination or expiration of this Lease, Lessee shall immediately vacate the Premises. If Lessee fails to vacate as herein provided, Lessee agrees that Lessor, or its authorized agents, may enter upon the Premises and remove all personal property therefrom and in this event, Lessee waives any and all claims for damages against Lessor, its agents or employees. Nothing herein shall be deemed a waiver of any rights of Lessor to demand and obtain possession of said Premises in accordance with the law in the event of a violation of Lessee of any part of the terms or conditions hereof.
27. Termination Prior to Expiration – This Lease may be terminated by Lessor in the event of default by Lessee. Lessor holds exclusive right to termination as included in this Agreement. Lessee may elect to terminate as provided by this Agreement, with consent from Lessor.



28. Time of Essence – Time is expressly declared to be of the essence.
29. Holding Over – This lease shall terminate without further notice at the expiration of the Term. Any holding over shall not constitute a renewal or extension. Lessee shall remove all Personal Property, animals owned by Lessee, and any such property at time of Termination.
30. Loss – Lessor agrees that should the demised Premises be so badly damaged by fire, incidents of war, earthquake, or other violent action of the elements as to render them wholly unfit for Lessee's occupancy, then this Lease shall be terminated immediately upon the happening of any such event, whereupon Lessee shall surrender the Premises and shall not be liable for any further Rent payments. In the event of any lesser damage by any such cause, Lessor may, at its sole discretion, restore the Premises to the condition it was in immediately prior to the event causing the damage, and the lease payment shall abate in proportion to the area not used by Lessee during the period of restoration. If Lessor should fail to pursue said restoration work with reasonable diligence to completion, Lessee, at its sole option may surrender the Premises and shall not be liable for any further Rent payments under this Lease and agreement.
31. Successors – Each and all of the terms and agreements herein contained shall be binding upon and shall inure to the benefit of the successors in interest of Lessor and, wherever the context permits or requires, the successors in interest to Lessee.
32. Trade Fixtures – Lessee shall install such fixtures, equipment, and personal property as may be necessary and convenient for its operation. Such furnitures, equipment, and personal property may be removed at any time during Lessee's tenancy or within a reasonable time thereafter, and shall not be considered part of the Premises. Removal of the same shall not damage or deface the Premises, and if the Premises shall be so damaged, Lessee shall repair such damage at its own expense.
33. Fire and Other Perils Insurance – The parties agree to be responsible for damage by the perils of fire, extended coverage, and vandalism to those items of real and personal property for which they hold title or for which they have assumed liability to others.
34. Waiver – The waiver of a breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.
35. Attorney Fees – In any action or proceeding by either party to enforce this Lease or any provision of this Lease, the prevailing party shall be entitled to recover reasonable attorney fees and all other costs incurred.
36. Acknowledgement – Lessee acknowledges that the Premises are part of Memorandum of Understanding between the Lessor and the City of Modesto, a municipal corporation, to allow a 501(c)(3) non-profit organization to temporarily occupy and operate an animal services related adoption and rescue organization on the Premises. At the end of the Term, the County and City shall make all reasonable efforts to abate, demolish and further seek disposition of the site for the public sale of the Premises. In furtherance of such covenant, Lessee agrees to utilize the Premises exclusively for animal services adoption and rescue organization that are consistent with the covenant of Lessor described above. Lessee

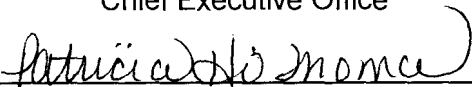
acknowledges that the determination of whether a particular usage of the Premises is in violation of the above-described covenant shall be made by Lessor in its sole discretion.

Lessee acknowledges and agrees that although it has been made aware of the Memorandum of Understanding between the Lessor and the City of Modesto, Lessee shall in no way be considered a third party beneficiary of such Memorandum of Understanding or any other agreement between the County and the City of Modesto.

- 37. Entire Agreement; Modification – This agreement is the entire understanding between the parties. Neither the agreement nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by the party against which the agreement of such waiver, modification, amendment, discharge or termination is sought and only to the extent set forth in such instrument.
- 38. Waiver of Rights of Subrogation – Lessor and Lessee agree that in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look solely to its insurance for recovery. Lessor and Lessee hereby grant to each other on behalf of any insurer providing insurance to either of them with respect to the Premises, a waiver of any right of subrogation which any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance.
- 39. Surrender – Lessee shall surrender the Premises to Lessor at the expiration of this Lease in as good a condition as at the commencement of it, excepting reasonable wear and tear, damages and destruction by the elements, or other persons, and alterations approved by Lessor. Lessee shall take full responsibility for the removal of its personal property, including any animals held on the Premises.

IN WITNESS WHEREOF the parties hereto have executed this Lease on the day, month and year first above written.

LESSOR  
**COUNTY OF STANISLAUS**  
Chief Executive Office

By:   
Patricia Hill Thomas, Chief Operations Officer

Date: 6/19/13, 2013

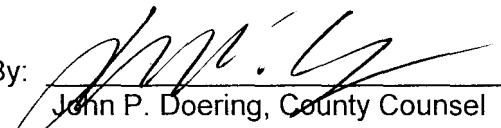
LESSEE  
**WAGS & WHISKERS RESCUE**

By:   
Jodi L. Baur, Vice President / Treasurer

Date: 6/14, 2013

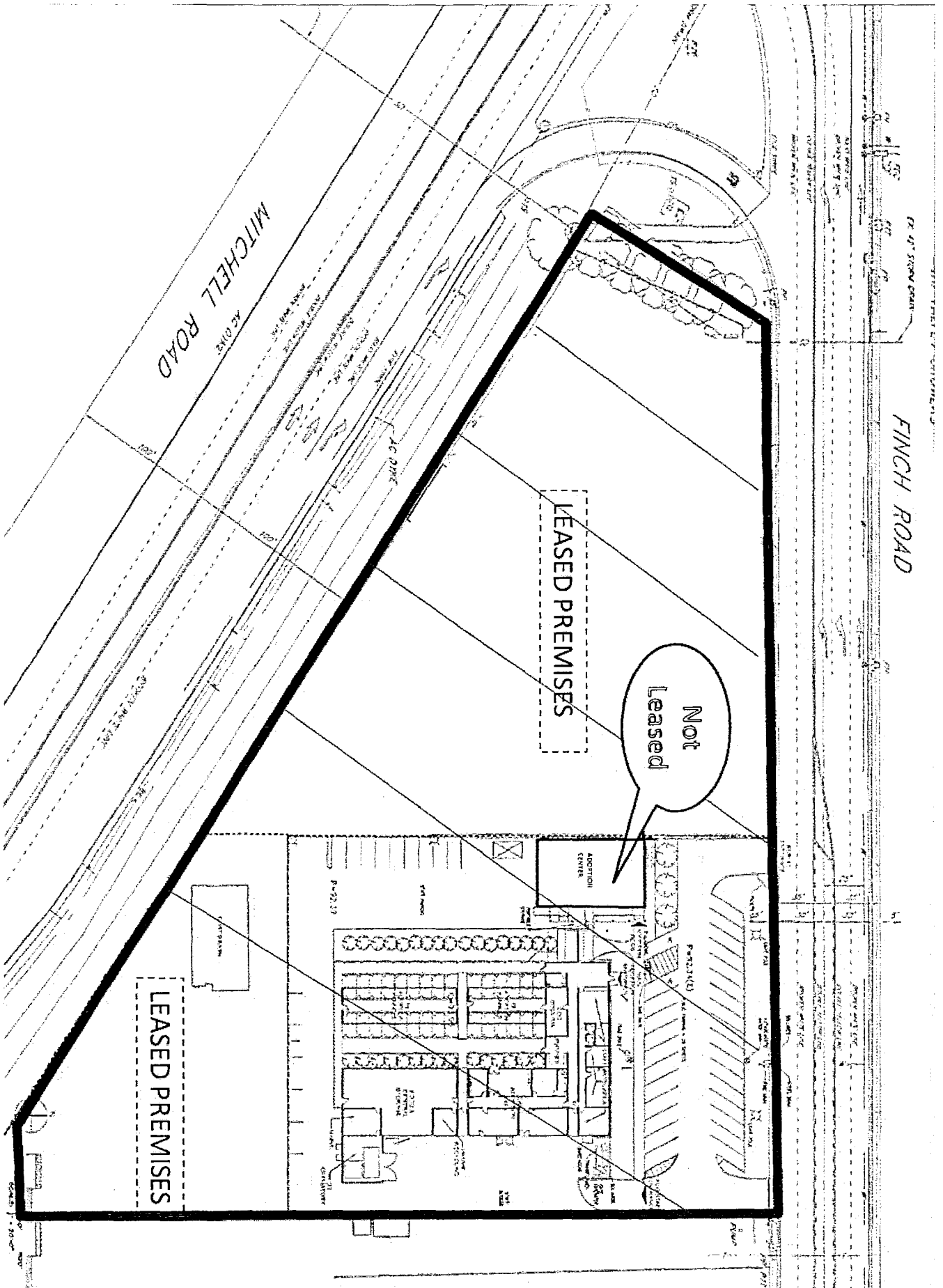
Federal ID Number:

**APPROVED AS TO FORM**  
**John P. Doering, County Counsel**

By:   
John P. Doering, County Counsel

Date: June 14, 2013

# EXHIBIT A



## EXHIBIT B-SCOPE OF THEFT IMPROVEMENTS

Line Item	Item	Cost	Extension	Vendor	Status
	<b>Direct Theft Exposure</b>				
1	Electrical Main Conductor from Transformer to Main 600 Amp Panel	LS	\$ 21,000.00	Access Electric	Some Work Performed and Quoted
2	Restore power to AC Units	LS		Included Above	Included Above
3	Replace Main Panel Conductor to Portable Trailer	LS		Included Above	Included Above
4	Replace Four (4) HVAC Units	LS	\$ 43,760.00	Comfort Air	quoted
5	Repair/Replace Rooftop Exhaust Fans	LS	\$ 3,450.00	GSA	quoted
6	Replace 100 Gallon Water Heater	LS	\$ 6,413.42	Slakey Bros	quoted
7	Labor 100 Gallon Water Heater	LS	\$ 1,354.81	GSA	quoted
8	Replace Stolen Kennel Gates (less quantity of 10)	LS	\$ 10,566.00	PlanIT Building Maint.	quoted
9	Repair to Kennel Door Slides	LS	\$ 816.58	GSA	quoted
10	Repair Exterior Plumbing Damage	LS	\$ 793.58	GSA	quoted
11	Plumbing Evaluation After Repairs	LS	\$ 500.00	GSA-Labor	Need Quote
12	Replace Security Camera DVR System	LS	\$ 1,942.46	GSA	quoted
13	Repair or Replace Exterior Lighting and Wiring	LS	\$ 3,924.00	Access Electric	quoted
14	Repair Exterior Chain Link Fence	LS	\$ 1,060.00	PlanIT Building Maint.	quoted
15	Repair Outside Light Posts	LS	\$ 1,000.00	TBD	Need Quote
16	Facility Door Repair and Rekey	LS	\$ 2,384.92	GSA	quoted
17	Demolish Existing Portable Trailer	LS	\$ 9,800.00	Demo Contractor	Need Quote
19	Rodent Fecal Hazmat/Replace all insulation	LS	\$ 150.00	Hazmat Cleanup	Based on Clark Estimate
20	Code Requirement for Main Panel Upgrade	LS	\$ 8,000.00	Electric Contractor	Need Quote
21	Arc Flash Liability Study	LS	\$ 1,900.00	Engineering Consultant	Miller Pezzoni Electrical Engineers
22	Roof Patching around ducting connections on roof	LS	\$ 3,000.00	GSA	After Install of Equipment
23	County FMD Labor-Previous	40 hr	\$ 3,456.00	GSA	Partial Work Performed
24	County FMD Project Management	32 hr	\$ 2,765.12	GSA	quoted
	Subtotal		\$ 128,036.89		
25	General Conditions, Permits and Inspection	.20 Construction	\$ 25,607.38		
	All Insured Work	<b>Total</b>	<b>\$ 153,644.27</b>		

**Amendment to the Memorandum of Understanding  
Dated November 12, 2009 Between  
the County of Stanislaus and  
the City of Modesto Relating to  
Shelter Capital Costs and the  
Disposition of the Finch Road Animal Shelter**


The November 12, 2009 Memorandum of Understanding Between the County of Stanislaus and the City of Modesto Relating to Shelter Capital Costs and the Disposition of the Finch Road Animal Shelter is amended as of July 1, 2013 as follows:

The following paragraph is added at the end of Section B:

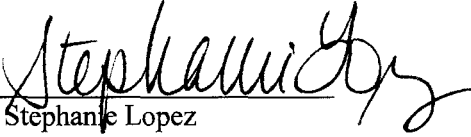
5. City and County have agreed to an interim reuse of the Finch Road facility by the non-profit Wags and Whiskers organization. Consistent with Section B.2. above, County will lease the Finch Road Property to Wags and Whiskers based on the following terms:
  - **Contingency of Lease:** The Lease shall be contingent upon receipt of County Theft Claims Insurance Proceeds to fix major theft items.
  - **Scope of Theft Repairs:** County will repair the HVAC, electrical, lighting and portions of the plumbing system to the extent that insurance proceeds cover the cost of the repairs.
  - **Use:** Wags and Whiskers shall use approximately 12,500 square feet of office and kennel space, excluding the portable trailer which is to be demolished, for an animal adoption and rescue center.
  - **Term:** Wags and Whiskers shall occupy the Finch Road Property for three (3) years, with an option for two (2) additional years that is held exclusively by County and City. The Lease shall have a maximum term of five (5) years with the knowledge that County and City may seek to clear and sell the property at its choosing at the end of year 3 or year 5.
  - **Rents:** Beginning year two (2) at \$1,200 annually through year five (5).
  - **Security Deposit:** \$600 to be deposited by Wags and Whiskers.
  - **Utilities:** Wags and Whiskers shall pay all utilities including water, sewer, gas, heat, electricity, telephone, data or internet, electronic security monitoring and all other services supplied.

- **Facility Repairs:**
  - City and County and Wags and Whiskers agree to a joint-responsibility approach to maintenance and repair of the major systems which are defined as the heating, ventilation and air conditioning system, electrical, roofing, domestic water (supply), domestic sewer (waste), irrigation and storm water drainage systems. City and County will pay up to \$5,000 each annually (max \$10,000 annually) and share equally in these costs up to the \$10,000 maximum to repair these systems. Any unused portion of the annual \$10,000 will not carry over from year to year. All costs exceeding this amount for major systems repair are the responsibility of Wags & Whiskers.
  - When the \$10,000 limit is exceeded, Wags and Whiskers will give the County a notice that there was a failure to those major systems. They will have thirty (30) days to develop a repair plan and another (30) days to make the repair. An event in conflict with the California Building Code of California Health and Safety Code may be cause for termination of the lease.
- **Maintenance:** Wags & Whiskers to maintain the facility and grounds including weed abatement. Facility is to be kept with cleanliness standards for animal care.
- **Inspections:** The County and City and the JPA Director reserve the right to conduct property, facility and organizational inspections.
- **Permits:** Wags and Whiskers to procure all permits for operations at its cost.
- **Performance Measures:** Beginning year two (2), Wags and Whiskers to perform 200 rescue pulls from the Stanislaus County Animal Services Agency (JPA) and over 500 total adoptions annually from Finch Road and its network.
  - An annual performance report is due to the County and City with financial and operational information.
- **Termination:** The County ultimately holds the right of termination of the Agreement with the tenant, and in the event of termination, default or cause then the County may terminate the Agreement. The County and City would then coordinate for clearing and disposition of the property.

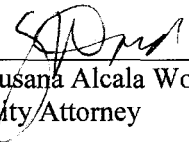
**CITY OF MODESTO**

By:   
Greg Nynhoff  
City Manager

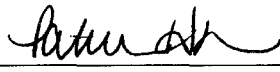
Dated: 8-14-13

Attest:   
Stephanie Lopez  
City Clerk

Reso 2013-269, August 7, 2013  
APPROVED AS TO FORM:

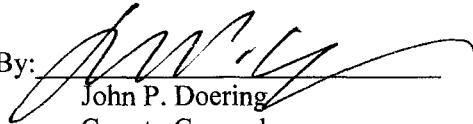
By:   
Susana Alcalá Wood  
City Attorney

**COUNTY OF STANISLAUS**

By:   
Patricia Hill Thomas  
Chief Operations Officer

Dated: 9-24-13

APPROVED AS TO FORM:

By:   
John P. Doering  
County Counsel