

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

DEPT: Chief Executive Office

BOARD AGENDA: 5.B.11
AGENDA DATE: May 22, 2018

SUBJECT:

Approval of a Promissory Note, Debt Payoff, and Authority to Execute Ground Lease Related to the Construction and Financing of the Thomas W. Mayfield Regional Animal Services Facility

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2018-0241

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

Ayes: Supervisors: Chiesa, Withrow, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Olsen

Abstaining: Supervisor: None


1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Chief Executive Office

BOARD AGENDA:5.B.11
AGENDA DATE: May 22, 2018

CONSENT:

CEO CONCURRENCE: YES

4/5 Vote Required: Yes

SUBJECT:

Approval of a Promissory Note, Debt Payoff, and Authority to Execute Ground Lease Related to the Construction and Financing of the Thomas W. Mayfield Regional Animal Services Facility

STAFF RECOMMENDATION:

1. Approve a Promissory Note and Ground Lease for the Animal Services Facility at 3647 Cornucopia Way, Modesto with the Stanislaus Animal Services Agency, a Joint Powers Agency.
2. Authorize the Chief Executive Officer, or his designee, to execute the required Ground Lease of 3647 Cornucopia Way, Modesto for the Animal Services Facility.
3. Approve the allocation to the County of a 40.5% share of the debt incurred by the Stanislaus Animal Services Agency, including principal and interest, for construction of the Animal Services Facility.
4. Approve the defeasance, or full payoff, of the County's share of the construction cost of the 2011 Thomas W. Mayfield Animal Services Facility, in an amount not to exceed \$1,700,000, as detailed in the attached Budget Journal.
5. Direct the Auditor-Controller to commit fund balance amount equal to the payoff balance which is not to exceed \$1,700,000.
6. Authorize the Auditor-Controller to make such other transfers in Fiscal Year 2017-18 as are necessary to reconcile the County's accounts with the Stanislaus Animal Services Agency's accounts in accordance with their respective obligations under the Joint Powers Agreement.

DISCUSSION:

Approval of Promissory Note and Ground Lease

The Stanislaus Animal Services Agency was established on November 5, 2009 as a Joint Powers Agency (JPA), comprised of the following members; Stanislaus County, City of Ceres, City of Hughson, City of Modesto, City of Patterson and the City of Modesto. The JPA further created a shared governance structure, with an equal vote of the six participating public agencies. The JPA also established a framework for 25-year debt and facility ownership of a future regional animal services facility.

The Thomas W. Mayfield Regional Animal Services Facility was constructed in 2010 on County-owned property at 3647 Cornucopia Way, Modesto. The complete project financing for construction of the regional Animal Services Facility was approved by the Board of Supervisors in May of 2009, which authorized a borrowing from the County's Tobacco Endowment Fund. The JPA authorized the financing of up to \$11 million for the construction of the facility, plus interest calculated on the actual interest lost by the County as a result of advancing funds from its Tobacco Endowment Fund. A Promissory Note and Ground Lease of County property were authorized by the JPA for this project as well.

Under the JPA agreement, each member agency's proportionate share of costs is based on average animal intake at the former animal shelter for Fiscal Years 2007-2008, 2008-2009 and 2009-2010.

Accordingly, each member's proportionate share of project costs is:

Agency	Cost Share
City of Ceres	11.1%
City of Hughson	1.2%
City of Modesto	42.9%
City of Patterson	2.6 %
City of Waterford	1.7%
County of Stanislaus	40.5%

Each partner, with the exception of the City of Patterson, which prepaid its share of construction costs in advance, has been making payments toward the facility's debt; however, the JPA and partner agencies have not formally approved the Promissory Note and Ground Lease.

On March 15, 2018, the JPA received an update on the facility's current outstanding debt and formally approved the Promissory Note. Included in this action was confirmation of each agency's commitment in the JPA to fund its share of the facility's construction debt cost including the actual interest lost by the County for advancing funds from the County's Tobacco Endowment Fund. The County's share was 40.5%.

An analysis was then conducted for the period July 2011 until June 30, 2018, on the actual interest rates earned by the County's Tobacco Endowment Fund, which ranged from 1.8% to 3.52%. Comparatively, the five remaining agencies (excluding City of

Patterson which fully paid its share in July 2011) have made flat quarterly payments at rate of 1.275%. The difference between the actual interest rates earned versus the flat rate of 1.275% paid, has resulted in underpayments from July 2011 to June 2018. To compensate the County for these underpayments, one-time additional interest payments have been calculated for each partner. The County's share of the interest rate shortfall is \$75,093.

As noted previously, the City of Patterson overpaid its share of construction costs. Upon approval of this item, the Stanislaus Animal Services Agency, which is holding Stanislaus County construction funds borrowed but not spent, will issue a refund in the amount of \$7,447 in overpayment and interest to the City of Patterson. In addition, approval of this item will authorize the Auditor-Controller to cooperate with the JPA in making such other transfers in Fiscal Year 2017-2018 as are necessary to reconcile the County's account with the Stanislaus Animal Services Agency's account in accordance with their respective obligations under the Joint Powers Agreement, including but not limited to the repayment by the JPA to the County of those funds (plus interest) borrowed from the County but not expended on the construction of the Facility.

Each JPA member agency is being asked now to formally adopt the Promissory Note and related Ground Lease for the Property that was authorized by the JPA in May of 2009. If approved by the Board of Supervisors, this action will formally approve the County's 40.5% share of the debt, including principal and interest, for construction of the facility.

Defeasance of the County's Share of Construction Debt

The Stanislaus County Legal Budget for 2017-2018 currently has available funds authority in the CEO-Debt Service budget of approximately \$2 million, not currently assigned to a capital project.

CEO Staff is recommending the use of up to \$1.7 million dollars from the approximately \$2.0 million available in the CEO-Debt Service Budget to pay off the outstanding balance of County's debt share of the Thomas W. Mayfield Animal Services Facility.

POLICY ISSUE:

The Board of Supervisors has the authority to approve agreements with the Joint Powers Agency including this Promissory Note and Ground Lease.

FISCAL IMPACT:

If staff recommendations are approved, the County's share of interest owed for the Thomas W. Mayfield Animal Services Facility will increase by \$75,093 to recognize the annual interest lost by the Tobacco Endowment Fund from July 2011 to June 2018. The use of savings in the 2017-2018 CEO-Debt Service budget of approximately \$1,700,000 will effectively pay off the County's share of the construction debt for the Thomas W. Mayfield Animal Services Facility. Consistent with Board of Supervisors' policy, the Auditor-Controller will commit the funds repaid to the County in General Fund

fund balance for future capital project/acquisition aligned with the Tobacco Endowment policy for use of funds.

BOARD OF SUPERVISORS PRIORITY:

The recommended actions are consistent with the Boards' Priority of *Delivering Efficient Public Services and Community Infrastructure* by approving the Promissory Note and Ground Lease for the Thomas W. Mayfield Animal Services Facility and the Community Infrastructure.

STAFFING IMPACT:

This action will be successfully completed by Chief Executive Office staff in collaboration with the Auditor-Controller's Office and the Executive Director of the Stanislaus Animal Services Agency.

CONTACT PERSON:

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

ATTACHMENT(S):

1. Budget Journal (A)
2. Budget Journal (B)
3. Ground Lease
4. Promissory Note

Database	FMSDBPRD.CO.STANISLAUS.CA.US.PROJ	DO NOT CHANGE
Balance Type	Actual	DO NOT CHANGE
Data Access Set	County of Stanislaus	DO NOT CHANGE
Ledger	* List - Text County of Stanislaus	DO NOT CHANGE
Category	* List - Text Transfer	
Source	* List - Text AC GL CB	
Currency	* List - Text USD	DO NOT CHANGE
Accounting Date	* List - Date 5/1/2018	ENTER AS MM/DD/YY EX: 11/01/11
Batch Name	Text	
Journal Name	Text JV 192740 AC GL CB 5/1/18	
Journal Description	Text Animal Services Borrowing - Balance of	
Journal Reference	Text V:\AC\GL\GutierrezF\Animal Services JP	
Chart Of Accounts	Text Accounting Flexfield	DO NOT CHANGE

Upl	Fund (4 char) * List - Text	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (5 char)	Debit * Number	Credit * Number	Line Description Text	
	0100	0016081	73026	0000000	000000	000000	00000	1,680,165.00		Animal Services - Balance of Pri	
	6180	0063581	29715	0018100	000000	000112	00000		1,680,165.00	Animal Services - County payme	
	6180	0000000	02050	0000000	000000	000112	00000	1,680,165.00		Balance of Principal and Interes	
	179C	0000000	01175	0000000	000000	000112	00000		1,680,165.00	Balance of Principal and Interes	
	179C	0016156	85850	0000000	000000	000112	00000	1,680,165.00		Transfer Unrestricted returned p	
	0100	0016011	46600	0000000	000000	000112	00000		1,680,165.00	Transfer Unrestricted returned p	
	0100	0000000	03610	0000000	000000	000000	00000	1,680,165.00		Commit Animal Services Paymer	
	0100	0000000	03677	0000000	000000	000000	00000		1,680,165.00	Commit Animal Services Paymer	
Totals:									6720660	6720660	

Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.

Explanation: Animal Services Tobacco Endowment Loan debt service payment - Balance of Principal and Interest Outstanding as of June 30, 2018.			
Original balance transferred in FY 2009/2010 from 179C 2006 Tobacco Securitization to 6180 Animal Services			
Departments Outside Auditors' Office		Auditors Office Only	
Prepared by	Patricia Hill Thomas	Keyed by	Christopher L Barnes Kashmir Gill
Date	Supervisor's Approval 5/16/2018	Date	Prepared By 5/8/2018
	Date	Date	Approved By 5/16/2018



Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2018-0079149-00

Thursday, NOV 15, 2018 15:49:51
Ttl Pd \$0.00 Rcpt # 0004200312
OJC/R2/1-39

**+RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Stanislaus County
1010 10th Street, Suite 6800
Modesto, CA 95354
Attention: Chief Executive Officer)

[Space above for Recorder's use]

GROUND LEASE

by and between the

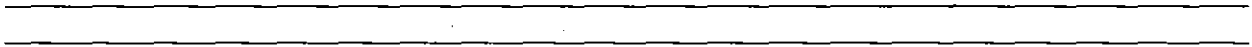
COUNTY OF STANISLAUS
as Landlord,

and

STANISLAUS ANIMAL SERVICES AGENCY
as Tenant

Dated as of December 1, 2009

(FOR THE STANISLAUS COUNTY ANIMAL SERVICES FACILITY)



NO DOCUMENTARY TRANSFER TAX DUE.
This Ground Lease is exempt from California
transfer tax pursuant to Section 11928 of the
California Revenue and Taxation code and
from recording fees pursuant to Sections 6103
and 27383 of the California Government Code.

39JC
44JE
39JE

TABLE OF CONTENTS

	Page
SECTION 1. <u>Definitions</u>	1
SECTION 2. <u>Effective Date</u>	2
SECTION 3. <u>Representations, Warranties and Covenants</u>	2
SECTION 4. <u>Lease of the Site and Recordation of Lease</u>	3
SECTION 5. <u>Tenant's Right of Quiet Enjoyment</u>	3
SECTION 6. <u>Purpose and Use</u>	3
SECTION 7. <u>Assignment or Sublease</u>	4
SECTION 8. <u>Term and Extensions</u>	4
SECTION 9. <u>Rental</u>	4
SECTION 10. <u>Initial Facility Development and Construction</u>	4
SECTION 11. <u>Alterations and Modifications to Facility</u>	4
SECTION 12. <u>Maintenance of Facility and Site</u>	5
SECTION 13. <u>Compliance with Laws</u>	6
SECTION 14. <u>Title to Improvements</u>	6
SECTION 15. <u>Taxes and Assessments</u>	6
SECTION 16. <u>Damage or Destruction</u>	6
SECTION 17. <u>Insurance</u>	7
SECTION 18. <u>Agency's Right to Terminate</u>	8
SECTION 19. <u>Non-Termination, Default and Damages</u>	8
SECTION 20. <u>Waste and Hazardous Materials</u>	8
SECTION 21. <u>Non-Discrimination</u>	8
SECTION 22. <u>Liens</u>	8
SECTION 23. <u>Indemnification</u>	9
SECTION 24. <u>Non-Encumbrance</u>	10
SECTION 25. <u>Miscellaneous</u>	10

TABLE OF CONTENTS
(continued)

	Page
Exhibit A Joint Powers Agreement	A-1
Exhibit B Legal Description of the Site	B-1

GROUND LEASE

THIS GROUND LEASE, dated as of December 1, 2009 for reference only (this "Ground Lease"), is entered into by and between COUNTY OF STANISLAUS ("County"), a Political Subdivision of the State of California, as Landlord, and the STANISLAUS ANIMAL SERVICES AGENCY ("Agency"), as Tenant. County and Agency are sometimes referred to collectively as the "Parties", and individually as a "Party".

RECITALS

WHEREAS, pursuant to that certain Joint Powers Agreement Establishing the Stanislaus Animal Services Agency dated November 5, 2009 ("JPA"), a copy of which is attached as Exhibit A hereto), the Parties agreed that the Agency would enter into a ground lease ("Ground Lease") with the County for use of certain County real property on which the Agency's Animal Services Facility ("Facility") has been built, which real property is owned in fee simple by County and legally described in Exhibit B attached hereto ("Site");

NOW, THEREFORE, in consideration of the mutual obligations of the Parties hereto, County hereby leases to Agency, and Agency hereby leases from County, the Site subject to the terms, covenants, agreements and conditions hereinafter set forth, to each and all of which County and Agency hereby mutually agree.

SECTION 1. Definitions.

As used herein, the following terms shall have the following meanings:

- (a) "Alterations" is defined in Section 11 below.
- (b) "County" is defined in the preamble.
- (c) "Effective Date" means the date this Ground Lease is valid, binding and effective as provided in Section 2 below.
- (d) "Facility" is defined in the Recitals.
- (e) "Ground Lease" is defined in the preamble, and includes all exhibits attached thereto.
- (f) "Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20,

Chapter 6.8 (Carpenter-Presley-Talmer Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code.

(g) "Improvements" mean the physical construction of the Facility and other buildings, improvements, structures, furnishings and equipment placed in, under or upon the Site by or for the use of Agency.

(h) "Indemnitees" is defined in Section 23 below.

(i) "JPA" is defined in the preamble.

(j) "Laws" means all applicable federal, state, county, city, or local agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued, including without limitation all building codes, regulations, ordinances, the Americans with Disabilities Act of 1990 (the "ADA"), all labor laws, and all covenants and restrictions of record. The term also includes government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords, or tenants.

(k) "Leasehold Estate" means the real property right and interest held by Agency as Tenant to possess, use and access the Site under the terms and conditions of this Ground Lease.

(l) "Parties" and "Party" are defined in the preamble.

(m) "Site" is defined in the Recitals.

(n) "Tenant" is defined in the preamble.

(o) "Term" is defined in Section 10 below.

SECTION 2. Effective Date.

Notwithstanding the actual execution date, the Parties hereby confirm and agree that except as otherwise expressly provided herein, this Ground Lease is effective and binding on the Parties ("Effective Date") as of December 1, 2009.

SECTION 3. Representations, Warranties and Covenants.

(a) Representations and Warranties of Agency. In addition to any express agreements of Tenant herein, Agency makes the following representations and warranties to County as of the Effective Date:

(1) Agency has full legal right, power and authority to enter into this Ground Lease as Tenant and to carry out and consummate all transactions contemplated by this Ground Lease;

(2) The officers of Agency executing this Ground Lease are duly and properly holding their respective offices and are fully authorized to execute this Ground Lease; and

(3) This Ground Lease has been duly authorized, executed and delivered by Agency, and will constitute a legal, valid and binding agreement of Agency, enforceable against Agency in accordance with its terms on the Effective Date.

(b) Representations, Warranties and Covenants of County. In addition to any express agreements of Landlord herein, County makes the following representations, warranties and covenants to Agency as of the Effective Date:

(1) County has full legal right, power and authority to enter into this Ground Lease as Landlord, to provide the Leasehold Estate to Agency under this Ground Lease, and to carry out and consummate all transactions contemplated by this Ground Lease and by proper action has duly authorized the execution and delivery of this Ground Lease.

(2) The officers of County executing this Ground Lease are duly and properly holding their respective offices and have the legal power, right and are fully authorized to execute this Ground Lease.

(3) This Ground Lease has been duly authorized, executed and delivered by County, and constitutes a legal, valid and binding agreement of County, enforceable against County in accordance with its terms upon the Effective Date.

(4) Agency shall at all times during the Term have access to and from the Site.

SECTION 4. Lease of the Site and Recordation of Lease.

County hereby leases the Site to Agency and Agency leases the Site from County. Agency and County shall have the right to record this Ground Lease in the Official Records of County as of the Effective Date or anytime thereafter.

SECTION 5. Tenant's Right of Quiet Enjoyment.

Subject to Agency's payment of rental and compliance with its obligations hereunder, County covenants that Agency, its assigns or sublessees, may quietly have, hold, and enjoy all of the Site and the Improvements during the Term of this Ground Lease and any extended term hereof, without hindrance or interruption by County or by any other person or persons lawfully or equitably claiming by, through or under County.

SECTION 6. Purpose and Use.

The Site shall be used by Agency, and each of its permitted assignees or sublessees during the term of this Ground Lease, solely for the purpose of constructing,

operating and maintaining the Facility as an Animal Shelter, and for such other purposes as may be incidental thereto, and for no other purpose.

SECTION 7. Assignment or Sublease.

Agency may sublet or assign all or a portion of the Site or the Facility or assign this Ground Lease or any interest therein for a use not related to the Purpose enunciated in Section 6 above, only with the prior consent or approval of County, which consent shall not be unreasonably withheld.

SECTION 8. Term and Extensions.

The Term of this Ground Lease shall commence on the Effective Date and shall terminate upon the repayment in full of that certain Promissory Note executed by the Agency in connecton with the construction cost of the Facility, which Promissory Note is anticipated to be repaid in full no later than the 25th anniversary thereof. The Term may be extended, at Agency's discretion, for two additional 25 year terms, provided Agency gives County at least 60 days written notice of its intention to extend the Term for an additional 25 years prior to the expiration of the then-current Term, and pays the required rental (\$1 per year, or \$25 for each additional 25 year term) on or before the commencement of the extension Term.

SECTION 9. Rental.

Agency shall pay County rental in the sum of One Dollar (\$1.00) per year, all of which rental for the initial Term shall be deemed to have been prepaid to County by Agency on the Effective Date. County agrees that the payment of such rental is adequate consideration for the leasing of the Site under this Ground Lease for the initial Term.

SECTION 10. Initial Facility Development and Construction.

The County shall cause the development and construction of the initial Improvements for the Facility as required by the JPA.

SECTION 11. Alterations and Modifications to Facility.

(a) After occupancy, Agency shall not make or allow any Alterations (as defined below) to the Facility or any part of the Facility without the prior consent of the County's Chief Executive Officer, which shall not be unreasonably withheld. All Alterations shall remain affixed to and shall become County's property at the end of the Term without compensation to Agency.

(b) "Alterations" means any of the following: construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work. "Alterations" does not include maintenance work, routine, recurring, and usual work for the preservation or protection of the Facility for its intended purposes; minor repainting provided the cost is less than \$1,000; minor electrical work provided the cost is less

than \$1,000; or landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

(c) After occupancy, Agency shall not make any changes to the size or functionality of the building without prior agreement of County.

(d) Plans and specifications for Alterations shall be prepared at Agency's expense by a licensed design professional. Any design professional retained by Agency shall be instructed to follow standard construction administration procedures and use standard specifications and details reasonably promulgated by County. The plans and specifications shall be approved by both County and Agency, which approval shall not be unreasonably withheld or delayed by either Party. At the conclusion of construction, Agency shall provide County a complete set of 'as built' plans for the Alterations.

(e) All Alterations shall be paid for by Agency unless otherwise expressly approved by the County. If Agency requests County to perform or contract for the Alterations and County agreed to do so, Agency shall pay for the cost of the Alterations in advance of the commencement of the work to enable the County to pay for the Alterations without advancing County's own funds.

(f) The parties acknowledge and agree that all improvements to or within the Facility constitute Public Works projects, and all applicable provisions of the California Public Contract Code apply to Alterations constructed within or to the Facility, including prevailing wage requirements. Pursuant to Public Contract Code Section 22010 et seq., all contracts for Alterations in excess of the statutory limit (currently \$45,000) shall be competitively bid and awarded to the lowest responsible bidder in accordance with applicable provisions of the Public Contract Code. Agency shall abide by all applicable laws and regulations relating to the construction of Alterations on or within the Facility including applicable provisions in the Labor Code relating to the payment of prevailing wages.

(g) Agency shall give County at least twenty (20) days advance notice of the commencement of any Alterations to permit County to post a Notice of Nonresponsibility for further protection against any liens.

SECTION 12. Maintenance of Facility and Site.

During the Term of this Ground Lease, Agency shall, at its own cost and expense and without any cost or expense to County, keep and maintain the Site, Improvements and Facility, and all appurtenances thereto in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. Agency shall likewise keep and maintain the grounds, parking areas, sidewalks, and landscaped areas within the Site in good and neat order and repair. The term "maintain" as used in this Lease shall include painting, cleaning, and making commercially reasonable repairs, replacements and/or upgrades as well as improvements necessary to comply with applicable Laws. County shall not be obligated to make any repairs, replacements or renewals of any

kind, nature or description whatsoever to the Site, Facility or any other improvements now or hereafter located thereon, and Agency hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof.

SECTION 13. Compliance with Laws.

During the Term of this Ground Lease, Agency shall use and occupy the Site and all Improvements, and operate the Facility, full compliance with all applicable Laws. Agency, at its sole cost and expense, shall promptly maintain and make all repairs, replacements, alterations, or improvements needed to comply with all Laws.

SECTION 14. Title to Improvements.

(a) As provided in the JPA, title to the initial Improvements shall automatically vest in the Agency upon completion. During the Term of this Ground Lease, title to all Improvements shall remain in Agency.

(b) Upon expiration or termination of this Ground Lease, Agency shall have no obligation to remove the Improvements. Title to all Improvements will revert to the County, subject to the County's payment of the then reasonable value of the Improvements (excluding Alterations as provided in Section 11 below). Notwithstanding the foregoing, to the extent requested by the County, Agency shall remove or cause to be removed from the Site all debris, rubbish, and furniture, equipment, free-standing cabinets, and other personal property items. Further, if requested by County, Agency shall execute, acknowledge and deliver to County any quitclaim deed or other document reasonably required by County or any reputable title company to remove the cloud of this Ground Lease from the Site and confirm the County's title to the Improvements.

SECTION 15. Taxes and Assessments.

Agency shall pay or cause to be paid all lawful taxes that may be levied at any time upon any interest Agency may have under this Ground Lease (including both the Site and the Improvements after the Effective Date). County and Agency each represent and acknowledge that neither Party believes or expects that its respective interests in the Site are subject to payment of property taxes. Agency shall have the right to contest the validity of any levy or tax assessment levied upon Agency's Leasehold Interest.

SECTION 16. Damage or Destruction.

County may terminate or cancel this Ground Lease in the event of material damage or destruction to the Facility. In the event of any such damage or destruction, County may, at its sole option, use the proceeds of any property insurance to rebuild or repair the Facility. In such an event, Agency shall grant to County a Right of Entry for Construction for the purpose of rebuilding and/or repairing the Facility.

SECTION 17. Insurance.

(a) During the term of this Ground Lease:

(1) Real Property Insurance. County shall include the Facility under its standard real property insurance program, including customary limits, deductibles, etc., at no cost to Tenant. Agency shall have no interest in or claim to any proceeds from County's real property insurance.

(2) Personal Property Insurance. Agency shall maintain coverage for all of its furniture, trade fixtures, equipment, merchandise, and all of Agency's other personal property in, on, at, or about the Facility or Site, to the extent of one hundred percent (100%) of the full replacement cost of covered property. County shall have no interest in or claim to any proceeds from Agency's personal property insurance.

(3) Commercial General Liability Insurance. Agency shall obtain commercial general liability insurance written on an "occurrence" policy form, covering bodily injury, property damage, and personal and advertising injury arising out of or relating (directly or indirectly) to Agency's business operations, conduct, assumed liabilities, or use or occupancy of the Site or Facility.

(i) The coverage for Agency's general liability insurance shall be no less than One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage combined and no less than One Million (\$1,000,000) annual general aggregate and no less than One Million (\$1,000,000) products and completed operations annual aggregate.

(ii) Agency shall be the first or primary named insured. County shall be named by separate endorsement as an additional insured under Agency's general liability coverage.

(4) Workers Compensation Insurance. Tenant shall procure and maintain workers' compensation insurance as required by law and employer's liability insurance with limits of no less than One Million Dollars (\$1,000,000).

(b) Periodic Review. The liability (general and employer's) insurance requirements may be reviewed by County periodically (not more than once every three years) for the purpose of increasing (in consultation with its insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards.

(c) Waivers of Subrogation. County and Agency each agree to cause the insurance companies issuing its property (first party) insurance to waive any subrogation rights that those companies may have against the other, as long as the insurance is not invalidated by the waiver. If the waivers of subrogation are contained in its policies, County and Agency each waives any right that it may have against the other

on account of any loss or damage to its property to the extent that the loss or damage is insured under its insurance policies.

SECTION 18. Agency's Right to Terminate.

Agency shall have the right to terminate this Ground Lease upon thirty (30) days written notice to County without any liability; provided, however, no termination of this Ground Lease or vesting of title to the Facility in the County may occur until the Promissory Note required by the JPA has been fully repaid. (This Article is effective as of January 1, 2011, the date of the foregoing Promissory Note.)

SECTION 19. Non-Termination, Default and Damages.

This Ground Lease shall expire at the end of the Term. It is expressly agreed by the Parties to this Ground Lease that any default under this Ground Lease will not allow either Party to terminate or otherwise interfere with Agency's quiet enjoyment and beneficial use of the Site under this Ground Lease. The sole remedy of any Party upon such default shall be a suit for money damages or specific performance to remedy such a default.

SECTION 20. Waste and Hazardous Materials.

Neither County nor Agency shall knowingly commit, suffer or permit any waste or nuisance on the Site or any acts to be done thereon in violation of any laws or ordinances. To County's best knowledge, after having examined its documents, public records and other instruments and having made inquiry of appropriate departments and agencies with respect to the Site and, except as specifically provided in this Ground Lease, no Hazardous Materials, were used, generated, stored, released, discharged or disposed of on, under, in, or about the Site or transported to or from the Site. Neither Agency nor any other person or entity under the control of, or with the knowledge of Agency will cause or permit the use generation, storage, release, discharge, or disposal of any Hazardous Materials on, under, in, or about the Site or transported to or from the Site.

SECTION 21. Non-Discrimination.

During the performance of this Agreement, Agency and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability including perception of disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code

sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

SECTION 22. Liens.

In the event Agency or its designees, at any time during the Term, causes any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Facility or the Site, Agency or its designees shall pay, when due, all sums of money that may become due for any labor, services, materials, supplies or equipment furnished to or for Agency, upon or about the Facility or the Site and which may be secured by any lien against the Facility, the Site, the Leasehold Estate or any other Agency interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or comes due; except that, if Agency desires to contest any such lien, it may do so. If any such lien is reduced to final judgment and such judgment or other process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed, said stay thereafter expires, Agency shall forthwith pay and discharge said judgment. Notwithstanding the foregoing, if any such lien attaches or purports to attach against County's fee interest in the Site, Agency shall cause the lien to be released and removed within thirty (30) days after County's written notice to Agency. If Agency fails to do so and County causes the lien to be released or removed, Agency will reimburse County for its reasonable costs and expenses within thirty (30) days of County's demand.

SECTION 23. Indemnification.

Agency shall indemnify, protect, defend and hold harmless the County, including but not limited to, each of County's officers, governing members, directors, officials, employees, subcontractors, consultants and agents (collectively the "Indemnitees"), from any and all claims, liabilities and losses arising out of the use of the Site or the Facility, including, but not limited to all demands, causes of action and liabilities of every kind and nature whatsoever arising out of, related to, or in connection with (a) any breach of this Ground Lease by Agency; (b) the operation, maintenance, use and occupancy of the Facility; (c) any acts or omissions of any contractor hired by Agency or its agents or subcontractor hired by such contractor; and (d) any claims by Facility customers, clients, and other invitees (collectively the "Claims"). Agency's obligation to indemnify, defend, and save harmless the Indemnitees shall extend to all Claims arising, occurring, alleged, or made any time, including prior to, during, or after this Ground Lease is in full force and effect. Agency's obligation to indemnify, defend, and save harmless the Indemnitees shall apply regardless of any active and/or passive negligent act or omission of the Indemnitees, but Agency shall not be obligated to provide indemnity or defense for Indemnitees wherein the Claims arise out of the gross negligence or willful misconduct of the Indemnitees. The indemnification obligation of Agency set forth in this Section shall not be limited by any insurance which Agency is required to maintain under this Ground Lease or the JPA, and shall survive the

expiration of the Term or earlier termination of this Ground Lease.

SECTION 24. Non-Encumbrance.

Agency shall not mortgage, pledge, hypothecate or grant any security interest in the Facility or Leasehold Estate without the County's written consent.

SECTION 25. Miscellaneous.

(a) Amendments. This Ground Lease may only be amended, changed, modified or altered in writing by the Parties.

(b) Waiver. The waiver by any Party of a breach by the other Party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

(c) Law Governing. This Ground Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California and any action arising from or relating to this Ground Lease shall be filed and maintained in Stanislaus County Superior Court, Modesto, California.

(d) Section Headings. All articles, paragraph and section headings, titles or captions contained in this Ground Lease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Ground Lease.

(e) Conflicts Between Terms of Documents. Nothing in this Ground Lease is intended to amend, modify or supersede the JPA except as expressly provided herein. In the event of any inconsistency in the JPA and this Ground Lease, the inconsistency shall be resolved by giving preference to the JPA. However, neither the Agency nor County being a member of the JPA will prevent either Party from exercising any right or remedy under this Ground Lease; neither will the existence of this Ground Lease and the Parties' Landlord-Tenant relationship prevent either Party from exercising any right or remedy under the JPA or the Promissory Note required by the JPA.

(f) Relationship of Parties. Agency and its agents and employees involved in the performance of this Ground Lease shall act in an independent capacity and not as officers, employees, agents, partners or joint venturers of County.

(g) Successors and Assigns. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective Parties.

(h) Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Ground Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction and the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants or conditions of this Ground Lease shall be affected thereby, and each provision of this Ground Lease shall be valid and enforceable to the fullest extent

permitted by law.

(i) Notices. All notices herein which are to be given or which may be given by either Party to the other, shall be in writing and shall be deemed to have been given three (3) business days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows:

To Agency: Stanislaus Animal Services Agency
3647 Cornucopia Way
Modesto, CA 95358
Attention: Executive Director
Facsimile:

To County: County of Stanislaus
1010 10th Street, Suite 6800
Modesto, CA 95354
Attention: Chief Executive Officer
Facsimile: 209-544-6226

Nothing herein contained shall preclude the giving of any such written notice by personal service, in which event notice shall be deemed given when actually received. The address to which notices shall be mailed to a Party may be changed by written notice given to all Parties as hereinabove provided.

(j) Execution and Counterparts. This Ground Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Ground Lease. It is also agreed that separate counterparts of this Ground Lease may separately be executed by the signatories to this Ground Lease, all with the same force and effect as though the same counterpart had been executed by all of the signatories.


(k) Exhibits. The following Exhibits are attached to this Ground Lease and incorporated by reference herein.

Exhibit A: Joint Powers Agreement Establishing the Stanislaus Animal Services Agency
Exhibit B: Legal Description of the Site

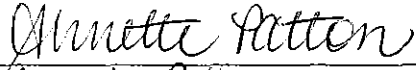
[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

[COUNTY] County of Stanislaus

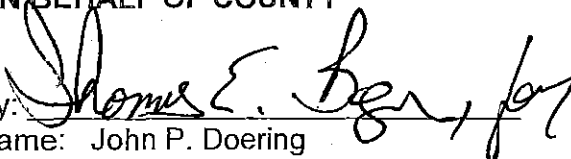
By: 
Name: Jody L. Hayes
Title: Chief Executive Officer

[AGENCY] Stanislaus Animal Services Agency

By: 
Name: Annette Patton
Title: Executive Director

APPROVED AS TO FORM:

ON BEHALF OF COUNTY

By: 
Name: John P. Doering

ON BEHALF OF AGENCY

By: 
Name: Deirdre McGrath

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

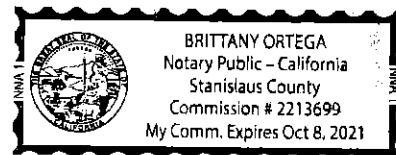
County of Stanislaus)

On November 13, 2018 before me, Brittany Ortega, notary public,
(here insert name and title of the officer)

personally appeared Jody L. Hayes who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Brittany Ortega

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Stanislaus)

On July 19, 2018 before me, Jennifer Jacquez notary public,
(here insert name and title of the officer)

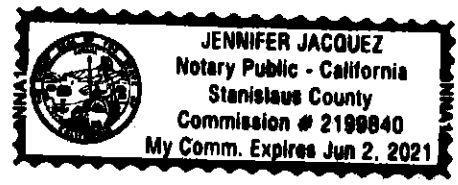
personally appeared Annette Patton who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jennifer Jacquez

(Seal)



CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that, pursuant to Section 27281 of the California Government Code, the interest in real property conveyed by this Ground Lease dated as of May 22, 2018 for reference only from the County of Stanislaus, a Political Subdivision of the State of California to the Stanislaus Animal Services Agency is hereby accepted by the undersigned on behalf of the Agency pursuant to authority conferred by the JPA dated November 5, 2009, and the Agency consents to the recordation thereof by its duly authorized officer.

ACCEPTED

STANISLAUS ANIMAL SERVICES AGENCY

By: Annette Patton
Name: Annette Patton
Title: Executive Director

Date: 7/19/18

EXHIBIT A

**(Joint Powers Agreement Establishing the
Stanislaus Animal Services Agency)**

(to be inserted)

**JOINT POWERS AGREEMENT ESTABLISHING THE
STANISLAUS ANIMAL SERVICES AGENCY**

This Joint Powers Agreement (the "Agreement") Establishing the Stanislaus Animal Services Agency is made and entered into by and among the cities of Ceres, Hughson, Modesto, Patterson and Waterford, and the County of Stanislaus on October, 27, 2009.

INTRODUCTION

A. Article 1 (commencing with section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code authorizes two or more public agencies, by a joint powers agreement entered into respectively by them and authorized by their legislative or governing bodies, to exercise jointly any power or powers common to the contracting agencies.

B. The Board of Supervisors of any county pursuant to Government Code section 25802 or the governing body of any city pursuant to Government Code section 38792, and both pursuant to Food and Agriculture Code section 30501, may take up and impound animals and establish animal control programs, including the authority to maintain, regulate, and govern public animal shelters.

C. The joint operation and management of an animal shelter for the mutual benefit of the parties and their respective residents provides efficiency and economy in government operations through the cooperation of member governments and the pooling of common resources.

D. The parties desire to form a regional agency to operate and manage an animal shelter and to provide animal services needed or requested by each participating member.

NOW, THEREFORE, the parties agree as follows:

1. Recitals.

The recitals set forth in the introduction to this Agreement are true and correct and are deemed to be part of the terms and conditions of this Agreement.

2. Purpose.

The purpose of this Agreement is to facilitate cooperation among the member agencies for specific purposes, interrelated actions, and for adoption of common policies with respect to issues and problems related to the operation and management of an animal shelter and provision of animal services within each member agency's jurisdiction.

3. Establishment of Stanislaus Animal Services Agency.

3.1 Separate Entity. Upon the effective date of this Agreement, the parties hereto establish the Stanislaus Animal Services Agency (the "Agency") as a public entity separate and distinct from its member entities, as the agent to exercise the common powers provided for in this Agreement, and to administer or otherwise execute this Agreement.

3.2 Member Agencies. The Agency shall be composed of the County of Stanislaus and the Cities of Ceres, Hughson, Modesto, Patterson and Waterford (the "Member Agencies"). In addition, any city within Stanislaus County that is not a named party or that may hereafter be incorporated, and which desires to participate in the activities of the Agency, may do so provided sufficient capacity will exist at the animal

shelter to accommodate the new participant's needs, and upon approval of two-thirds (2/3) of the Member Agencies, subject also to adoption of a resolution by the new party's governing body authorizing execution of this Agreement, and agreement to fully participate financially in the Agency.

3.3 Powers and Functions. The Agency shall have the common power of the Member Agencies to plan, establish and exercise all government functions necessary to provide animal services for the benefit of the Member Agencies. Pursuant to Government Code Section 6509, the Agency's manner of exercising such powers shall be subject to those restrictions applicable to the City of Modesto. The Agency Board is authorized to do the following in the name of the Agency:

- (a) Employ an Executive Director as the chief administrative officer of the Agency.
- (b) Employ agents and employees and contract for professional services and employee services from another public agency. The Agency Board may appoint sufficient personnel to act in a staff capacity for the Agency, which may include staff from Member Agencies and may hire and retain consultants, Personal Services Contractors, and others, as determined to be necessary to accomplish the purposes of this Agreement.
- (c) Make and enter into contracts authorized in the Agency budget.
- (d) Acquire, hold and convey real and personal property, including leasehold interests, and exercise the power to acquire real property by eminent domain.
- (e) Cooperate with other agencies, counties and other local public and non profit groups or private agencies and participate in joint projects as necessary.

- (f) Incur debts, obligations and liabilities, which shall be the sole responsibility of Agency and shall not be a debt, obligation or liability of Member Agencies.
- (g) Accept contributions, grants or loans from any public or private agency or individual, or the United States, the State of California or any department, instrumentality or agency thereof, for the purposes of financing its activities.
- (h) Sue and be sued, in its own name only, but not in the name or stead of any Member Agency.
- (i) Adopt Bylaws to govern or regulate the conduct of meetings, designate Agency officers, and other affairs of the Agency not otherwise specified in this Agreement.
- (j) Do all other acts reasonable and necessary to carry out the purposes of this Agreement.

3.4 Withdrawal of Member Agency. A Member Agency may withdraw from the Agency at any time by giving notice to all other Member Agencies by resolution of intent to withdraw adopted by the governing board of the withdrawing party. Upon the effective date of such withdrawal, the withdrawing party shall cease to be bound by the Agreement, except for any long-term financing obligations placed upon the withdrawing party under this Agreement. However, upon agreement between the Agency and the withdrawing party, the withdrawing party may sell and assign its equity interest in the animal shelter facility, first, to the Agency, then to another Member Agency, if additional animal capacity is needed by the Agency or another Member Agency.

4. Management Framework.

4.1 Board. The Agency shall be governed by a Board, the members of which shall be the City Manager of each member agency and the Chief Executive Officer of the County. Pursuant to Government Code section 6506, the Agency Board is designated as the administrator of this Agreement and of the Agency's affairs, and shall perform its duties and responsibilities in accordance with all provisions of this Agreement.

4.2 Alternate Representative. Each member agency shall designate at least one alternate representative. To be eligible to cast a vote, alternates must be designated, and notice of said designation given to the Executive Director of the Agency (or person acting in that capacity) at least 24-hours prior to the first meeting at which that alternate is to attend on behalf of the Member Agency's designated representative.

4.3 Voting. Each Member Agency shall have one vote on the Agency Governing Board.

4.4 Quorum and Majority Requirement. A quorum shall consist of one-half the total number of representatives entitled to vote, plus one. A simple majority of the representatives present shall be required for the Agency Board to take any action, except to adjourn a regular meeting where a quorum is not present. A two-thirds majority of Board Member representatives shall be required to approve all fiscal matters and any other action requiring, under existing law, a 2/3 majority. For purposes of this agreement, fiscal matters shall include approval of the Agency's budget and all amendments, adjustments or other changes to the approved budget.

4.5 Meeting Time and Place. The Agency Board shall establish a time and place for regular meetings, which shall occur at least once each year. All meetings shall be conducted in accordance with the Ralph M. Brown Act (Gov. Code Section 54950 et seq.).

4.6 Conflict of Interest. The Agency Board shall adopt and, thereafter, maintain a conflict of interest code in compliance with applicable provisions of the Political Reform Act (Gov. Code section 87300 et seq.) and the regulations adopted by the Fair Political Practices Commission (Cal. Code of Regs, tit. 2, section 1870 et seq.).

4.7 Operational Plan. The Agency Board shall, within six months of Agency establishment, create an operational plan to describe in detail the operation, reconciliation, budget process, schedule, and other operational, budgetary, and financial processes.

5. Fiscal Matters.

5.1 Ongoing Operation Expenses. The animal shelter operating expenses of the Agency shall be paid by the Member Agencies in proportion to the percentage of animals received from the Member Agency's jurisdiction to the total number of animals received at the animal shelter. Operational expenses shall include annual costs and expenses to provide animal shelter services including, without limitation, staff expenses, veterinary expenses, administration, utilities, insurance, maintenance, lease or rental payments, and other costs in the approved operating budget. Operational expenses shall not include capital financing costs. Member Agency's annual operating expenses will be based on the animal intake percentage from the fiscal year ending two years prior to the fiscal year to be applied.

5.2 Member Agency Payments. Member Agency payments shall be offset by and net of licenses and fee revenue generated to the agency by each jurisdiction. The actual method adopted by the Agency Board shall be incorporated into and made a part of the Agency operational plan.

5.3 Additional Animal Services. If any Member Agency elects to have the Agency provide additional animal services in its jurisdiction, including but not limited to field services and canvassing, the cost allocation methodology of the additional services

shall be determined by the Agency Board. The full costs of any additional services shall be born by the Member Agency requesting the additional service.

5.4 Additional Support. With prior approval of the Agency Board, any Member Agency may also provide resources in an amount determined by its governing body to be reasonable and appropriate for the purposes of the Agency, including staff and professional services of the Member Agency, provision of quarters, janitorial services and maintenance, supplies, printing and duplication, postage, telephone services, transportation services and professional and technical assistance. The Agency shall reimburse the Member Agency for the reasonable and necessary cost and expense of services or resources provided by the Member Agency as determined and approved by the Agency Board and in accordance with the approved budget.

5.5 Capital Improvements. The County shall cause to be constructed on County-owned land, an animal shelter of sufficient size and capacity to accommodate the current and projected needs of the Member Agencies. Subject to the reimbursement provisions set forth herein, upon completion of construction and acceptance by the County, the improvements shall automatically be owned by the Agency.

- a) The Agency will execute an agreement with the County to repay the County over 25 years for the cost of construction for the new animal shelter facility plus interest. The cost of construction will be the total capitalized costs, which will consist of those costs and expenses typically reflected in identifying total project costs, including without limitation, design, construction and construction management fees, equipment, furnishings, permits, fees, and all project costs in the adopted project budget. The repayment to the County will also include interest charges, including capitalized interest, calculated on the actual interest lost by the County from advancing County funds to construct the animal shelter facility.

- b) Total capitalized costs allocable to Agency shall be capped at \$11,000,000. Should total capitalized costs exceed \$11,000,000, Member Agency cities shall have the option to withdraw from Agency. If any Member Agency city elects to withdraw under the terms of this paragraph, that Agency City shall have no further financial responsibility to Agency.
- c) Each Member Agency's proportion of capitalized costs shall be fixed and shall be based upon the average of the total animal intake of Member Agencies in proportion to each Member Agency's annual percentage of animal intake at the shelter for fiscal years 2007-08, 2008-09, and 2009-10. Each Member Agency shall pay to the Agency its proportional share of the costs identified in paragraph 5.5(a). The first payment shall be due on the first day of the fiscal year following the date of the actual occupancy of the new animal shelter by the Agency. Member Agencies may elect to pay capitalized cost in advance upon facility completion
- d) Except as provided in Section 5.5 (b), the obligation of a Member Agency to reimburse the Agency for the cost of financing capital improvements as set forth in paragraph 5.5 (a) shall survive termination or rescission of this Agreement or the withdrawal of a Member Agency. In the event of a termination or rescission of this Agreement, Member Agencies shall make their payments directly to the County of Stanislaus or its designee. Should a Member Agency withdraw and the Agency does not elect to purchase the withdrawing Member Agency's percentage share and Member Agency does not sell its percentage to a public or government agency as provided in paragraph (f), the withdrawing Member Agency shall continue to make its payments under this Agreement to the Agency.

- e) Upon a Member Agency's withdrawal, Agency has first right of refusal to purchase, at a price as agreed by Agency and Member Agency, exiting Member Agency's percentage share.
- f) If the Agency does not purchase the exiting Member Agency's percentage share, the exiting Member Agency may transfer or sell, as appropriate, to a public or governmental agency, with the approval of a majority of the remaining Member Agencies.

5.6 Long-Term Ground Lease. The Agency shall enter into a 25-year, zero cost lease with the County for use of the County property on which the animal shelter is constructed. The lease may be extended, at Agency's discretion, for two additional 25 year terms, provided the Agency gives at least 60 days written notice of its intention to extend the lease for an additional 25 years prior to the expiration of the current lease, or any previous extension of its term. Improvements shall belong to the Agency, provided that upon expiration of the lease term, the improvements will revert to County ownership, upon payment by the County of the then reasonable value of the improvements.

5.7 Fiscal Year/Member Agency Payments. The Fiscal Year of the Agency shall commence on July 1 of each year and shall terminate on June 30 of the following year. Each Member Agency shall deposit an amount equal to the first quarterly payment of operational and debt service costs with the Treasurer of the Agency no later than July 1 of each year, the remaining three quarters will be due October 1, January 1, and April 1 of each year.

6. General Terms and Conditions.

6.1 Term of Agreement. This Agreement shall continue in force without a specific term until it is terminated or rescinded upon the mutual agreement of the parties.

6.2 Accountability. Pursuant to Government Code section 6505, the Agency shall be strictly accountable for all funds received by the Agency.

6.3 Agency Treasurer and Auditor-Controller. Treasurer and Auditor-Controller for Agency shall be selected by Agency upon a majority vote of Member Agencies. The Agency shall reimburse any other government agency or Department providing approved services.

6.4 Legal Counsel. Legal Counsel for Agency shall be selected by Agency upon a majority vote of Member Agencies. The Agency shall reimburse any other government agency or Department providing approved services.

6.5 Property of Agency. The Executive Director, or in his or her absence, the chairman of the Agency Board, shall be in charge of, handle, or have access to any property of the Agency and shall file with the Agency an official fidelity bond in a penal sum determined by the Agency as security for the safekeeping of the Agency's property entrusted to the person or employee. However, if the Executive Director or other persons designated are already bonded by another agency, and the existing bonding incorporates coverage levels and limits required by Agency, no additional bonding shall be required by this section. Premiums for any bonds required under this section shall be paid by the Agency.

6.6 Surplus Property. Pursuant to Government Code section 6511, upon termination of this Agreement, any surplus property shall be returned, pro rata, to the Federal, State, or local agency or the Member Agency that provided the property. The parties shall use good faith efforts and fair dealing in processing and dividing any surplus property that cannot be attributed to any single Member Agency.

6.7 Distribution of Assets. Pursuant to Government Code section 6512, any surplus money on hand after termination of the Agreement shall be returned to the funding source from which funds were furnished, or to the agency making the

contribution. The parties shall use good faith efforts and fair dealing in processing and dividing any surplus money that cannot be attributed to any single funding source or Member Agency, keeping in mind the position of the parties before they entered into this Agreement.

6.8 Indemnity. No Member Agency or any of its officers or employees shall be responsible for any damage or liability arising out of or relating to any obligation of a Member under the Agreement. The Member Agencies further agree, pursuant to Government Code section 895.4, that each Member Agency shall fully indemnify and hold harmless all other Member Agencies and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such party under this Agreement. Selection of insurance coverage and insurers shall be by majority vote of Member Agencies and shall include both those coverages required by law and as may be selected by a majority vote of Member Agencies.

6.9 Severability. Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which Member Agencies intended to enter into in the first instance.

6.10 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

6.11 Amendment. This Agreement may be modified, amended, changed, added to, or subtracted from by the mutual consent of a 2/3 majority of the parties to the Agreement provided the amendment or change is in written form and executed with

the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

6.12 Effective Date. This Agreement shall become effective upon approval of this Agreement by resolution of two or more of the governing bodies for the Member Agencies, and shall have no binding force and effect on any Member Agency unless and until approved by its governing body.

6.13 Counterpart Execution. This Agreement, or any amendment to this Agreement, may be executed in counterparts, each of which shall be deemed to be an original and said counterparts shall constitute one in the same document which may be sufficiently evidenced by one counterpart.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first herein above written.

- Signatures on Following Pages -


**JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)**

Member Agency Approval

COUNTY OF STANISLAUS

By: 
Jim DeMartini, Chairman
Board of Supervisors

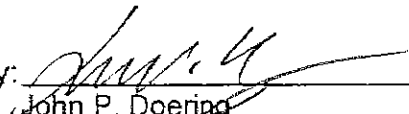
ATTEST: Christine Ferraro-Tallman
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By: 
Deputy Clerk

APPROVED AS TO CONTENT:

By: 
Richard Robinson
Chief Executive Officer

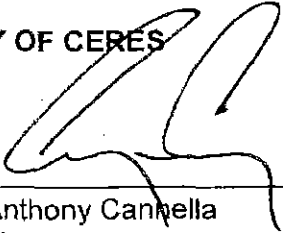
APPROVED AS TO FORM:

By: 
John P. Doering
County Counsel

**JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)**

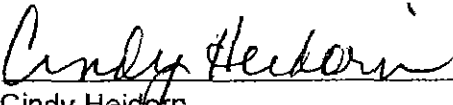
Member Agency Approval

CITY OF CERES

By: 

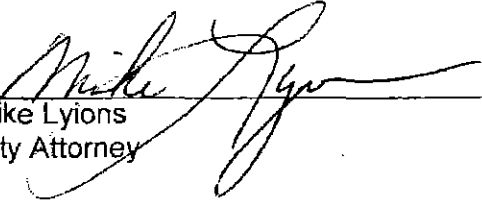
Anthony Cannella
Mayor

ATTEST:

By: 

Cindy Heidorn
City Clerk

APPROVED AS TO FORM:

By: 

Mike Lyons
City Attorney

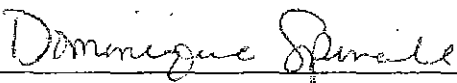
**JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)**

Member Agency Approval

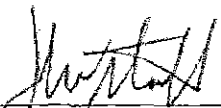
CITY OF HUGHSON

By: 
Ramon Bawanan
Mayor

ATTEST:

By: 
Dominique Spinale
Deputy City Clerk

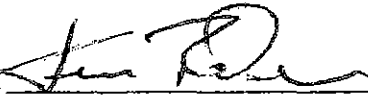
APPROVED AS TO FORM:

By: 
John Stovall
City Attorney

JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)

Member Agency Approval

CITY OF MODESTO

By: 

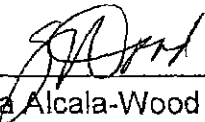
Jim Ridenour
Mayor

ATTEST:

By: 

Stephanie Lopez
City Clerk

APPROVED AS TO FORM:

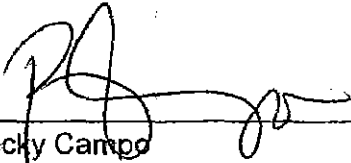
By: 

Susana Alcala-Wood
City Attorney


**JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)**

Member Agency Approval

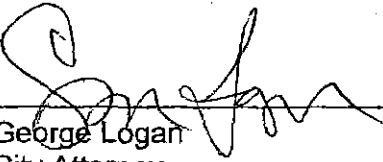
CITY OF PATTERSON

By: 
Becky Campo
Mayor

ATTEST:

By: 
Maricela Vela
City Clerk

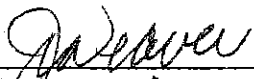
APPROVED AS TO FORM:

By: 
George Logan
City Attorney


**JOINT POWERS AGREEMENT
(Stanislaus Animal Services Agency)**

Member Agency Approval

CITY OF WATERFORD

By: 
Charlie Goeken Jim Wearn
Mayor Vice-mayor

ATTEST:

By: 
Lori Martin
City Clerk

APPROVED AS TO FORM:

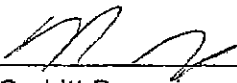
By: 
Corbett J. Browning
City Attorney

EXHIBIT B


STANISLAUS ANIMAL SERVICES AGENCY
LEASE AREA
LEGAL DESCRIPTION

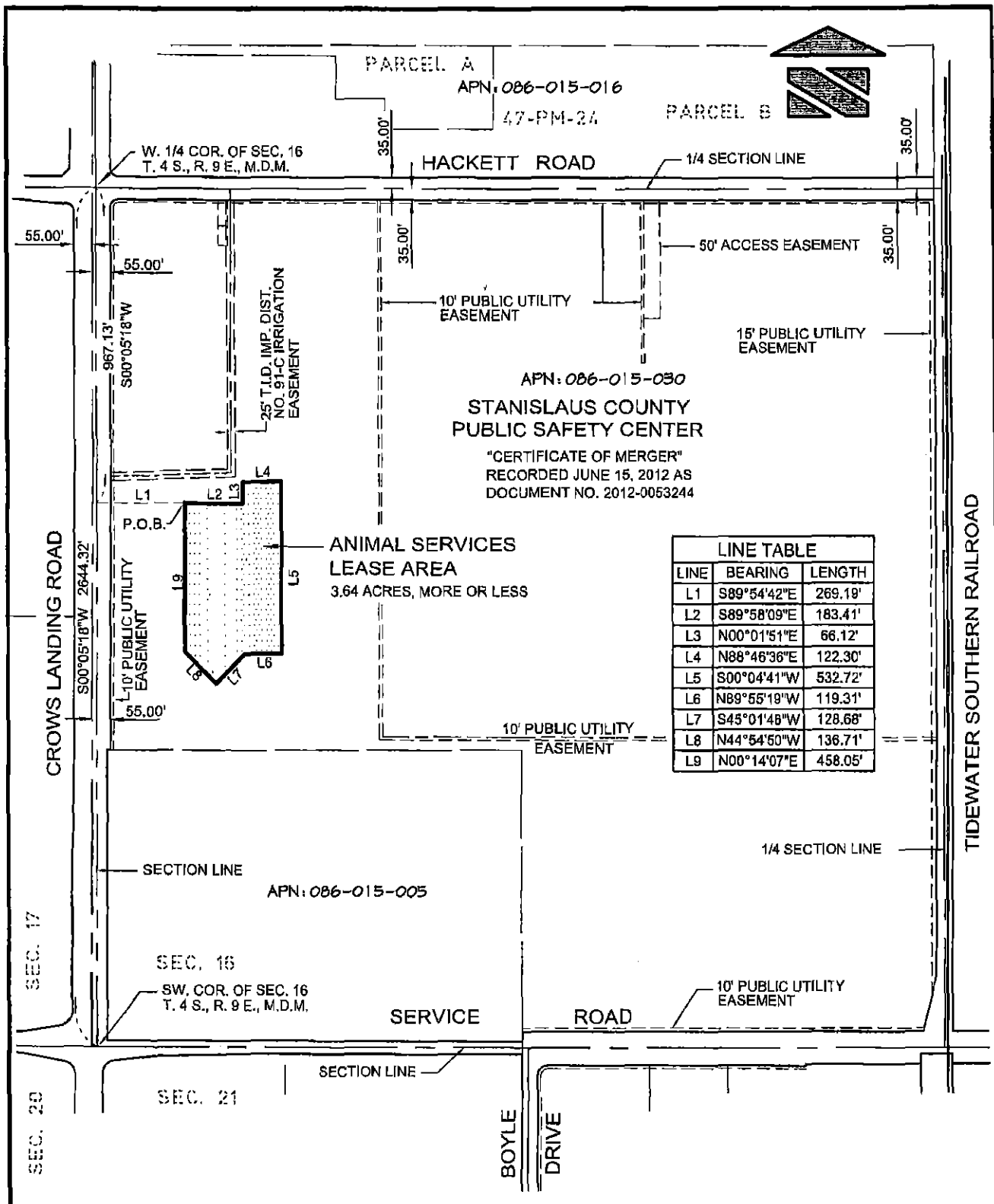
ALL that certain real property situate in the City of Ceres, County of Stanislaus, State of California, lying within a portion of the Southwest Quarter of Section 16, Township 4 South, Range 9 East, Mount Diablo Meridian, described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of said Section 16; thence South 00°05'18" West along the West line of said Southwest Quarter, a distance of 967.13 feet; thence South 89°54'42" East, a distance of 269.19 feet to the POINT OF BEGINNING of this description; thence South 89°58'09" East, a distance of 183.41 feet; thence North 00°01'51" East, a distance of 66.12 feet; thence North 88°46'36" East, a distance of 122.30 feet; thence South 00°04'41" West, a distance of 532.72 feet; thence North 89°55'19" West, a distance of 119.31 feet; thence South 45°01'48" West, a distance of 128.68 feet; thence North 44°54'50" West, a distance of 136.71 feet; thence North 00°14'07" East, a distance of 458.05 feet to the point of beginning.

CONTAINING 3.64 acres more or less.




Dave L. Skidmore, L.S. 7126
3/04/15



LINE TABLE		
LINE	BEARING	LENGTH
L1	S89°54'42"E	269.19'
L2	S89°58'09"E	183.41'
L3	N00°01'51"E	66.12'
L4	N88°46'36"E	122.30'
L5	S00°04'41"W	532.72'
L6	N89°55'19"W	119.31'
L7	S45°01'48"W	128.68'
L8	N44°54'50"W	136.71'
L9	N00°14'07"E	458.05'

DRAWN: DLS
DATE: 3/04/15
SCALE: 1"=400'
JOB #: 823N-14
DWG: ExB(r2)

EXHIBIT "B"
PLAT TO ACCOMPANY LEGAL DESCRIPTION
STANISLAUS ANIMAL SERVICES LEASE AREA
CITY OF CERES, COUNTY OF STANISLAUS,
STATE OF CALIFORNIA



**ASSOCIATED
ENGINEERING
GROUP**

4206 TECHNOLOGY DRIVE, SUITE 4, MODESTO, CA 95356
PHONE: (209) 545-3390 FAX: (209) 545-3875 www.assoceng.com

PROMISSORY NOTE
(Repayment Animal Services Facility Construction Costs)

Principal: \$6,698,122
Interest Rate: The Index (defined below)

Note Date: July 1, 2011
Regular Maturity Date: July 1, 2038

FOR VALUABLE CONSIDERATION, the undersigned STANISLAUS ANIMAL SERVICES AGENCY, a joint powers agency by and among the cities of Ceres, Hughson, Modesto, Patterson and Waterford, California, and the County of Stanislaus (“**Maker**”), hereby promises to pay to THE COUNTY OF STANISLAUS, a political subdivision of the State of California (“**Payee**”), as Fiscal Agent for the 2006 Tobacco Securitization Fund, or order, at 3647 Cornucopia Way, Modesto, CA 95358, or such other place as Payee may from time to time designate in writing, in lawful money of the United States of America, the principal sum of SIX MILLION SIX HUNDRED NINETY EIGHT THOUSAND ONE HUNDRED TWENTY TWO DOLLARS \$6,698,122.00, together with interest at the average rate earned from time to time by AC 2006 Tobacco Securitization Fund maintained by Payee (the “**Index**”), on the unpaid principal balance from the date hereof, provided that such interest shall not exceed the maximum amount permitted under California law, payable on the terms hereinbelow provided:

1. Payments Under the Note

(a) Notwithstanding that this Note will bear interest at the current Index rate, commencing July 1, 2011, and continuing on the first day of each succeeding fiscal quarter (October 1, January 1, April 1, and July 1) through the end of the 2017-2018 fiscal year, Maker shall make fixed quarterly payments in advance equal to \$327,130, the amount which, provided this Note bore interest at 1.275% per annum (not the Index rate), would be sufficient to cause all principal under this Note to be paid in full on the Regular Maturity Date.

(b) Notwithstanding that this Note will bear interest at the then-current Index rate, commencing July 1, 2018, and continuing on the first day of each succeeding fiscal quarter (October 1, January 1, April 1, and July 1) through the Regular Maturity Date (or if sooner, until this Note is paid in full), Maker shall make quarterly payments of principal and interest in advance, at the average rate earned by the Index for the preceding fiscal year (“**Prior Year Index**”) in an amount which, provided the payment amount were to remain unchanged throughout the remaining term of this Note (other than adjustments required due to rounding), and assuming the Prior Year Index rate always equaled the Index rate, would be sufficient to cause all principal under this Note to be paid in full on the Maturity Date.

(c) Except for the final fiscal year of this Note, after the end of each fiscal year where payments are made as provided in clause (b) above, (i) any overpayment amounts (caused by the Prior Year Index exceeding the Index for that year) shall be applied to principal as of the last day of the fiscal year and treated as a prepayment of this Note, and (ii) any underpayment amounts (caused by the Prior Year Index being less than the Index for that year) shall be added to principal and bear interest like all other principal under this Note. If there is an overpayment or underpayment for the last fiscal year of this Note, Payee shall refund the overpayment to Maker within 30 days after determining the amount or Maker shall pay the underpayment to Payee within 30 days of Payee’s notice of the amount, as applicable.

(d) Each payment (including prepayments) shall be credited first to accrued interest and thereafter to the principal balance, and interest shall then cease upon the amounts so credited to principal. Interest under this Note which is not paid quarterly shall be added to (and become a part of) principal and bear interest at the Index rate until paid.

2. Maker or any Member of Maker may voluntarily prepay this Note, in whole or in part, at any time during the term of this Note, without penalty or premium. Following any prepayment, the quarterly payment amount shall be adjusted to reflect the resulting principal reduction.

3. Until this Note is paid in full, Payee shall use reasonable efforts to provide Maker with all of the following on or before each July 1:

(a) The actual Index rate for the County's Tobacco Securitization Fund for the preceding fiscal year, and a statement that the next year's payments will be based on that rate as the Prior Year Index rate.

(b) The overpayment or underpayment amount (if any), and resulting reduction of or addition to principal of this Note, as applicable.

(c) The quarterly payment amount for the current fiscal year (starting with the July 1 payment), based on the then-principal balance (including taking into account any prepayments) and the then-Prior Year Index rate, determined in accordance with Section I(b) above.

4. As of the date of this Note, the Index's rate is 1.022%. The Index may adjust throughout the term of this Note. As of the date of this Note and since July 2010, the Index's average earnings rate by fiscal year has been:

FY10/11:	1.80%
FY11/12:	2.47%
FY12/13:	2.51%
FY13/14:	2.53%
FY14/15:	2.95%
FY15/16:	3.13%
FY16/17	3.52%

5. Maker confirms that in accordance with that certain Joint Powers Agreement Establishing the Stanislaus Animal Services Agency, dated November 5, 2009 (including any amendments, "JPA"), by and among the cities of Ceres, Hughson, Modesto, Patterson and Waterford, California, and County of Stanislaus (each, a "Member"), each Member has agreed to pay the following percentages of the total capitalized costs (as defined in the JPA) for construction of the new animal shelter facility:

Ceres	Hughson	Modesto	Patterson	Waterford	County of Stanislaus	Total
11.1%	1.2%	42.9%	2.6%	1.7%	40.5%	100.0%

Due to prepayments of capitalized costs at different times by different Members, the above percentages do not necessarily reflect actual allocations of quarterly payment amounts among the remaining Members.¹

6. By its execution below, Maker confirms, and by its acceptance hereof, Payee confirms, that they have neither desired nor intended, by this Note or any other agreement, to violate any usury or other applicable law. Therefore, if it is ever determined under applicable standards of law that any amount paid under this Note was in excess of the then legal maximum interest rate, then that excess portion shall be deemed a payment of principal and applied against the principal (last payment first, to the extent permitted by law) of the Note.

7. The interpretation, legality and enforcement of this Note shall be governed by the laws of the State of California.

8. This Note is in connection with and subject to the JPA. However, except to the extent Payee fails to make payments as provided in the JPA, all payments under this Note shall be paid without any claim of offset, setoff, counterclaim, deduction or abatement of any nature or for any cause whatsoever. Maker waives diligence, presentment, protest and demand and notice of protest, dishonor and non-payment of this Note.

9. None of the terms of this Note may be waived, altered, modified or amended except by a written instrument executed by Maker and Payee expressly indicating an intention to waive, alter, modify or amend this Note.

10. This Note shall be binding upon the Maker and its successors and assigns and shall inure to the benefit of Payee, and its heirs, devisees, legal representatives, successors and assigns.

IN WITNESS WHEREOF, Maker has executed this Note as of the date first above written.

“Maker”

STANISLAUS ANIMAL SERVICES AGENCY

By: _____
 Name: _____
 Its: _____

APPROVED AS TO FORM:
 STANISLAUS COUNTY COUNSEL
 BY *Deirdre McStrath*
 DATE: 5/18/18

¹ For additional information, see Attachment 1 to this Note

Payment Schedule

[To Be Provided]

<u>Date</u>	<u>Amount</u>	<u>Stanislaus County</u>	<u>City of Modesto</u>	<u>City of Ceres</u>	<u>City of Patterson</u>	<u>City of Waterford</u>	<u>City of Hughson</u>	<u>Total</u>
Jan- June 2011	Total							
	Principal							
	Interest							
Jul- Sep 2011	Total							
	Principal							
	Interest							
Oct- Dec 2011	Total							
	Principal							
	Interest							
Jan- Mar 2012	Total							
	Principal							
	Interest							
Apr- Jun 2012	Total							
	Principal							
	Interest							
	Total							
	Principal							
	Interest							
	Total							
	Principal							
	Interest							

Additional Information

1. The JPA defines “capitalized costs” for the new animal shelter facility as “those costs and expenses typically reflected in identifying total project costs, including without limitation, design, construction and construction management fees, equipment, furnishings, permits, fees, and all project costs in the adopted project budget.”
2. Project cost is different than original principal amount of this Note, because (see below) the County prepaid in part and Patterson prepaid in full, and there was a small amount of interest earned during the construction phase.
3. Total project cost was \$8,244,774. The County pre-paid \$1,268,550 (in 2009 and 2010), leaving a net amount of \$6,976,224. The construction funds earned \$57,558 in interest prior to June 30, 2011, bringing the net project cost to \$6,918,666.
4. The original Principal amount of this Note above (\$6,698,122) reflects a net project cost of \$6,918,666 less Patterson prepayment of \$220,544
5. Patterson’s actual share was \$212,868. It paid \$220,544 in July 2011, resulting in an overpayment of \$7,676. No interest expense was calculated for Patterson as the amount was paid early in July. Patterson’s overpayment was ultimately repaid (with interest).