

## HUMANE SOCIETY LEASE AGREEMENT

This Lease Agreement (the "**Lease**") is entered into as of September 27, 2010, by and between the City of Fort Bragg, a municipal corporation ("**Landlord**" or "**City**") and Mendocino Coast Humane Society, a California non-profit (501(c)(3)) corporation ("**Tenant**"). Landlord and Tenant are hereinafter collectively referred to as "**Parties**."

## RECITALS

A. Upon the execution of this Lease, Landlord will lease to Tenant that certain real property located within the City of Fort Bragg city limits, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with all the improvements located thereon and including a 50' roadway and utility easement to approach the facility herein referred to in Exhibit A, hereinafter referred to as the "**Property**".

B. The lease of the Property by Landlord to Tenant is for use solely by Tenant to provide an animal shelter for the benefit of the public.

C. Landlord desires to lease the Property to Tenant, and Tenant desires to lease the Property from Landlord, upon the terms and conditions set forth in this Lease, for the operation of an animal shelter by Tenant, as more particularly described herein.

D. The form of Lease was approved by Landlord's City Council at a duly noticed public meeting on September 27, 2010.

E. The Parties desire to enter into the Lease on the terms and conditions provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

1.1 "**Animal Shelter**" means a facility that is operated to provide for the care of homeless, stray or unwanted animals.

1.2 "**Animal Shelter Improvements**" means any and all improvements to the Property and/or facilities including all buildings, building improvements and land improvements built and owned by Tenant used thereon that are necessary or appropriate for the operation or support of the Animal Shelter, including but limited to a Veterinary Clinic, Pet Shop, and overnight animal accommodations.

1.3 "**City**" shall mean the City of Fort Bragg.

1.4 "**Commencement Date**" means September 28, 2010.

1.5 **“Construction Plans”** means any site design, engineering, landscaping, or architectural drawings and plans created for the purpose of guiding the development of the Property and the construction of the Animal Shelter Improvements and any related facilities.

1.6 **“Environmental Law”** means any and all federal, state and local statute, ordinance, order, rule, regulation, guidance document, judgment, governmental authorization, or any other requirement of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health & Safety Code, § 25300 et seq.).

1.7 **“Expiration Date”** means June 1, 2060.

1.8 **“Events of Default”** are defined in Section 20 of this Lease.

1.9 **“Hazardous Materials”** means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Law as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous substances” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, methyl-tert-butyl-ether, perchlorate and synthetic gas usable as fuel, whether or not defined as a hazardous waste, hazardous material or hazardous substance in the Environmental Laws.

1.10 **“Landlord”** means the City of Fort Bragg.

1.11 **“Lease Termination”** means the expiration of the Term or sooner termination of the Lease.

1.12 "Losses" is defined in Section 16 of the Lease.

1.13 "Notice of Breach" is defined in Section 20.2 of the Lease.

1.14 "Personal Property" is defined in Section 17 of this Lease.

1.15 "Property" is defined in Exhibit A.

1.16 "Rent" is defined in Section 3 of the Lease.

1.17 "Tenant" means the Mendocino Coast Humane Society, a California non profit (501(c)(3) corporation, and any approved successor-in-interest or assignee of the Mendocino Coast Humane Society.

1.18 "Term" means the duration of the Lease as described in Section 2.

2. Term. The Term of this Lease shall commence on the Commencement Date and unless sooner terminated pursuant to the provisions hereof, shall expire on the fiftieth (50<sup>th</sup>) anniversary of the Commencement Date.

3. Rent. Rent shall be payable annually throughout the Term in the sum of One U.S. Dollar (\$1.00), payable on July 1<sup>st</sup> of each calendar year, for the use and occupancy of the Property.

4. Permitted Uses of Property.

4.1. Tenant shall use the Property for the exclusive purpose of operating an Animal Shelter and other facilities directly related to providing care and shelter to animals being housed at the Animal Shelter, such as a veterinary clinic. Tenant shall obtain and keep in effect all licenses and entitlements required for this use of the Property and shall comply with all terms and conditions of said licenses and entitlements. Tenant shall not physically damage, or fail to maintain and repair, the Property.

4.2 Tenant may not store, treat or dispose of Hazardous Materials on the Property, other than *reasonable* quantities of Hazardous Materials necessary for the operation and maintenance of an Animal Shelter. Any Hazardous Materials used in the ordinary course of operating and maintaining an Animal Shelter must be used and disposed of in accordance with Environmental Laws and worker health and safety laws.

4.3 A violation of any terms or conditions of sections 4.1 or 4.2, above, shall constitute an Event of Default, as described in section 20.1 below, on the part of Tenant and shall entitle Landlord to any of the remedies described herein relating to an Event of Default.

5. Construction of Animal Shelter.

5.1 Design and Construction of Improvements. Tenant shall be responsible for the design and construction (as that term is defined in California Labor Code § 1720(a)) of the Animal Shelter Improvements in compliance with all applicable

federal, state and local laws and regulations. Tenant will obtain all required permits to construct the Animal Shelter Improvements and related facilities, including without limitation, all service utilities, and will pay all costs associated therewith.

5.2. Cost of Construction. Except as expressly set forth herein, all costs of site preparation, design, development, construction and operation of the Animal Shelter, including the Animal Shelter Improvements, shall be borne solely by Tenant and shall not be an obligation of the Landlord. In addition, Tenant will pay all costs for the design and installation of private water and sewer.

5.3 Planning Application and Processing Fees. Tenant will promptly pay all City planning, administration and engineering fees and charges incurred by the City in connection with the coordination, review and approval of the Humane Society and the Animal Shelter Improvements.

5.4 Defects in Plans. Landlord shall not be responsible to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord and its council members, agents, employees, contractors, and volunteers from and against any claim for damage to property or injury to or death of any person arising out of, or in any way relating to, the Animal Shelter Improvements or related facilities, including without limitation, defects in the Construction Plans or defects in any work done pursuant to the Construction Plans, or the failure to obtain necessary permits.

5.6 Easements. Tenant shall obtain all necessary access and/or construction easements, and any rights-of-way or rights-of-entry necessary for the construction and/or operation of the Animal Shelter and Animal Shelter Improvements.

5.7 Delays in Completion. In the event that completion of the Animal Shelter Improvements is delayed, Tenant agrees that it shall take all steps reasonably necessary, in a manner reasonably acceptable to Landlord, to secure the construction site, protect the site from the elements, and screen the site from public view.

## 6. Compliance with Laws.

6.1 Generally. Tenant will, at its own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, whether federal, state, county or municipal, including those requiring capital improvements to the Property, relating to any use and occupancy of the Property as an Animal Shelter. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Property or any portion of the Property, the Tenant must procure and maintain it throughout the term of this Lease. The judgment of any court of competent jurisdiction, or the admission by Tenant in a proceeding brought against Tenant by any governmental entity, that Tenant has violated any such statute, ordinance, regulation, or requirement will be conclusive as between Landlord and Tenant and will constitute grounds for termination of this Lease by Landlord.

6.2 Waste, Nuisance. Tenant may not use the Property, or permit or suffer the Property to be used, in any manner that results in waste, nuisance, or unreasonable annoyance to owners or occupants of adjacent properties. Notwithstanding the foregoing, the Parties understand and agree that the Property is to be used as an Animal Shelter, and hereby agree that the normal operation of an Animal Shelter will not constitute a nuisance or unreasonable annoyance.

6.3 Damage. Tenant may not do anything on the Property that will cause damage to the Property.

6.4 Compliance with Hazardous Materials Laws. Tenant represents and warrants that during the term of this Lease, the Property will not be in violation of any federal, state or local law, ordinance or regulation regarding the use, storage, disposal or disposition of Hazardous Materials, and Tenant, at Tenant's sole cost and expense, will comply with and will not use the Property or suffer or permit anything to be done in, on, or about the Property which will in any way conflict with, any and all applicable federal, state, county or municipal laws, regulations or ordinances pertaining to air quality and water quality, Hazardous Materials, hazardous waste disposal, waste disposal, air emissions, water discharges, and other environmental and health and safety matters, which laws, regulations or ordinances impose any duty upon Landlord or Tenant directly or with respect to the use or occupancy of the Property. Landlord's determination that a substance is a Hazardous Material shall be conclusive unless Tenant establishes to the reasonable satisfaction of Landlord that because of its quantity, concentration, or physical or chemical characteristics, the substance does not pose a significant threat to human health and safety or to the environment.

6.5 Prevailing Wage Policy. Tenant shall carry out or shall cause its contractors to carry out, the construction of the Animal Shelter Improvements and all related facilities in conformity with all applicable local, state and federal laws, ordinances, rules and regulations, including without limitation, all applicable federal, state, and local labor laws and standards including, to the extent applicable, California Labor Code § 1720 *et seq.* and the regulations adopted pursuant thereto.

6.5.1 Tenant has paid, and will continue to pay for all costs associated with the development of the Property as an Animal Shelter. Such expenses include, but are not limited to, the cost for all necessary survey, drafting, and design work; permit application fees; and construction costs for all on- and off-site improvements, including the costs for all labor, materials, and inspections. Tenant will also be solely responsible for the costs associated with the ongoing maintenance of the Property and the Animal Shelter, except as otherwise excluded herein. Tenant will also be fully responsible for all costs and risk of loss associated with the operation of the Animal Shelter. In order to insure that there are no inadvertent payments of public funds, however, if Landlord receives any bill or invoice for any construction, alteration, demolition, installation, or repair work related to the development or maintenance of the Property or the operations of the Animal Shelter, Landlord must promptly notify Tenant of such bill or invoice. Upon receipt of such notice, Tenant shall pay any such bill or invoice out of its own funds.

6.5.2 Tenant shall defend, indemnify, protect and hold harmless the Landlord, its council members, employees agents and volunteers from and against any and all liabilities, obligations, orders, claims, damages, fines, penalties and expenses of any kind whatsoever (including, without limitation, reasonable attorneys' fees), arising from or in connection with Tenant's failure to comply with all applicable laws relating to the construction of the Animal Shelter Improvements, including, without limitation, all applicable federal, state and local labor laws and standards.

6.6 Nondiscrimination and Equal Opportunity. In accordance with California's Unruh Civil Rights Act, California Civil Code §51, Tenant may not discriminate on the basis of sex, race, color, religion, creed, religion, ancestry, national origin, language spoken, disability, medical condition, marital status, or sexual orientation in the hiring, firing, promoting or demoting of any person engaged in construction of the Animal Shelter Improvements or operation of the Animal Shelter, and Tenant must direct its contractors and subcontractors to refrain from discrimination on any such basis.

7. Utilities and Services. Throughout the Term, Tenant will be responsible for all costs associated with the provision of utilities and services to the Property, including without limitation electricity, gas, water, sewer, waste disposal, trash collection, janitorial, repair and maintenance services, telephone or other communication service, or any other utility service used, rendered or supplied upon or in connection with the Property or the Animal Shelter or any part thereof. Tenant will also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of wires, pipes, conduits and other equipment for the supply of utilities to the Property.

8. Maintenance and Repair. Tenant shall maintain the Property in a clean and sanitary condition. Landlord shall have no obligation to maintain or make repairs to the Property. Tenant shall pay all costs and expenses attributable to or incurred in connection with Tenant's use and occupancy of the Property including janitorial services as required by any state or county animal shelter codes.

9. Security. Tenant is responsible for providing reasonable security on the Property at all times.

10. Taxes and Assessments. Throughout the Term, Tenant shall pay, prior to delinquency, all real property taxes, possessory interest taxes, license and permit fees, sales, use or occupancy taxes, assessments whether general or special, ordinary or extraordinary, unforeseen, as well as foreseen, of any kind or nature whatsoever, pertaining to the Property or part thereof, including, but not limited to (i) any assessment, levy, imposition or charge in lieu of or in substitution for real estate taxes; and (ii) any assessment for public improvements or benefits which is assessed, levied, or imposed upon; or which becomes due and payable and a lien upon (a) the Property or any part thereof or any personal property, equipment or other facility used in the operation thereof, (b) the rent or income received by Tenant from subtenants or licensees, (c) any use or occupancy of the Property or part thereof, or (d) this transaction or any document to which Tenant is a party creating or transferring an

estate or interest in the Property, or any part thereof. Upon request by the Landlord, Tenant shall furnish, in a form satisfactory to Landlord, evidence of payment prior to delinquency of any such obligations payable by Tenant.

11. Public Utility Easements. Landlord reserves the right to locate and construct its own utilities, and to grant nonexclusive easements across the Property for other purposes, including the installation, maintenance, repair, and replacement of other utilities necessary or appropriate for the operation of the Animal Shelter. Tenant shall have no right to grant easements, licenses or any other interest in or right to use the Property without Landlord's prior written consent. Landlord agrees to join in granting or dedicating such public or private utility or other easements as may be reasonably required for the construction and operation of the Animal Shelter in accordance with this Lease. Landlord will not unreasonably withhold its consent to Tenant's request for utility easements and/or rights of way for installation, maintenance, repair, or replacement of utilities (including, without limitation, easements for telephone or other telecommunications facilities) that are useful or necessary for the construction of the Animal Shelter Improvements or the Tenant's use of the Property for the purposes permitted hereunder during the Term.

12. Inspection. At any time during the Term, upon reasonable advance notice and during normal business hours, Landlord may inspect the Property to confirm that it is being operated and properly maintained as required herein. Notwithstanding the above, in cases of emergency, Landlord may enter without notice and at any time, day or night. Following its inspection, Landlord may deliver to Tenant written notification of any portions of the Property which Landlord has determined are not being operated or properly maintained as required, and Tenant must promptly prepare and deliver to Landlord a proposed plan for remedying the indicated deficiencies. Tenant's failure to deliver a remedial plan and to complete remedial work within a reasonable time, as agreed upon by Landlord and Tenant, shall be a default under this Lease. The failure of Landlord to inspect or to notify Tenant of any deficiency shall not be a waiver of default or of Landlord's right to enforce Tenant's maintenance and repair obligations. Tenant shall defend (with counsel reasonably acceptable to Landlord), indemnify and hold Landlord, its council members, employees, agents and volunteers harmless from and against any and all claims arising out of Tenant's failure to fully and timely fulfill its obligations as required hereunder, including without limitation, the obligation to maintain and repair the Animal Shelter Improvements. Nothing in this Section 12 obligates Landlord to conduct inspections of the Property.

13. Condition of the Property.

13.1 "AS-IS" Condition. Tenant is leasing the Property in its "AS IS" condition, with all faults, as such condition exists as of the Commencement Date. Landlord recommends that Tenant conduct a full inspection into the condition of the Property to ensure that the Property is free and clear of Hazardous Materials, that the Property is adequate for its intended use as an Animal Shelter, and that the Tenant can secure the appropriate governmental approvals to operate an Animal Shelter.

13.2 Environmental Condition of the Property. California Health & Safety Code section 25359.7 requires owners of non-residential real property who

know, or have reasonable cause to believe, that any release of Hazardous Substances has come to be located on or beneath the real property to provide written notice of same to the buyer or lessee of real property. Landlord urges Tenant to satisfy itself regarding the environmental condition of the Property. By execution of this Lease, Tenant (i) acknowledges it is in receipt of the foregoing notice given pursuant to Cal. Health & Safety Code § 25359.7; (ii) acknowledges that it has been urged to and may conduct its own independent review and investigation of the Property; and (iii) waives any and all rights Tenant may have to assert that the Landlord has not complied with the requirements of Health & Safety Code § 25359.7. Tenant covenants that throughout the term of the Lease, Tenant will comply with the obligations of Lessees in California Health & Safety Code § 25359.7, including without limitation, notifying Landlord of any suspected Hazardous Materials on, under, or about the Property.

14. Future Alterations and Repairs. Tenant may not make alterations, erections, or additions to the Property without the prior written consent of Landlord and without first obtaining all permits and other requirements necessary for such alterations, erections, or additions. Landlord agrees that Tenant is entitled to make repairs as part of its normal maintenance and risk management programs without obtaining prior written consent of Landlord.

15. Insurance Requirements. During the term of this Lease, all extensions thereof, hold-over periods, or any other occupancy of the Property by Tenant, Tenant must maintain at its sole cost and expense, the following insurance coverages: (i) Comprehensive General Liability insurance issued by a carrier authorized to sell insurance in the State of California, written on an occurrence basis, and providing coverage for bodily injury, death and property damage caused by or occurring in connection with Tenant's use and occupancy of the Property with a policy limit of at least One Million U.S. Dollars (\$1,000,000) per occurrence and Two Million Dollars in the aggregate (\$2,000,000); (ii) Workers' Compensation insurance in compliance with the requirements of California law; and (iii) property insurance providing coverage against fire, casualty loss and damage to the Property and the Animal Shelter Improvements in the amount of One Million Dollars (\$1,000,000).

15.1 Additional Insured, Cancellation. All policies, except for Workers' Compensation, must name Landlord as an additional insured. All policies must contain a provision that coverage will not be cancelled, nonrenewed, or permitted to expire or lapse without thirty (30) days prior written notice being provided by the insurance carrier to Landlord. When cancellation of coverage is for reasons of non-payment of premium, the insurance company must provide Landlord with ten (10) days written notice of cancellation.

15.2 Cross Liability Exclusion. All coverages must provide that the insurance is primary with respect to all parties insured by the policy. There shall be no cross-liability exclusion in any insurance policy.



15.3 Copies of Policies. Tenant shall, within ten (10) days after execution of this Lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, delivered to Landlord a true and correct copy of each insurance policy required by Section 15 of the Lease. In limited circumstances, and at the sole discretion of Landlord, Tenant may provide a certificate executed by the insurance company or companies or their authorized agents evidencing the policy or policies.

15.4 Destruction of Improvements. If at any time during the term of this Lease, any improvements now or hereafter on the Property are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, this Lease shall continue in full force and effect or be terminated in the manner set forth in Section 19 of this Lease.

15.5 Failure to Obtain Insurance. If Tenant fails or refuses to procure or to maintain insurance as required by this Lease, or fails or refuses to furnish Landlord with required proof that the insurance has been procured and is in force and paid for, Landlord shall have the right at Landlord's election and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be treated as added rent due from Tenant with interest at the maximum allowable legal rate in effect in California on the date when the premium is paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurers, and interest shall run from the date of the notice.

15.6 Exculpation of Landlord. Landlord shall not be liable to Tenant for any damage to Tenant or to the Animal Shelter Improvements on the Property from any cause, except if such damage is caused by the gross negligence of Landlord, its agents, employees, contractors, or volunteers. For purposes of Sections 15 and 16 of the Lease, "gross negligence of Landlord, its agents, employees, contractors, or volunteers" shall not include any failure on the part of such parties to conduct inspections of the Property or the Animal Shelter Improvements or otherwise make themselves aware of conditions on the Property. The Parties expressly agree that Indemnitees, as defined in Section 16, below, shall have no obligation or duty to conduct inspections of the Property. The conditions of the Property and the Animal Shelter Improvements shall, during the term of this Lease, be the responsibility of Tenant. Tenant waives all claims against Landlord for damage to Tenant, Tenant's property, Tenant's facilities, and to the Animal Shelter Improvements, except if such claims are the result of gross negligence on the part of Landlord, its agents, employees, contractors, or volunteers.

16. Indemnity. To the fullest extent allowed by law, Tenant will indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord, its council members, employees, agents and volunteers ("**Indemnitees**") harmless from and against any and all claims, demands, liabilities, losses, damages, expenses (including attorney and consultant fees), environmental investigation, removal and remedial action costs, and causes of actions (collectively, hereinafter "**Losses**") arising out of or in connection with the condition of the Property including, without limitation, the presence or discovery, investigation or cleanup of Hazardous Materials, the death or injury to any person or animal on the Property, or the damage or destruction of the Property. The

indemnification provided in this paragraph shall specifically apply to and include: claims or actions brought by or on behalf of Tenant's employees; Tenant's use, occupation, operation or management of the Property; Tenant's failure to comply with any of its obligations contained in this Lease; or any negligence of Tenant or any of Tenant's officers, directors, employees, agents, contractors, guests, or invitees, provided that Tenant shall not be obligated to indemnify, defend or hold Landlord harmless for Losses resulting from the gross negligence of Landlord, its council members, agents, employees, contractors, or volunteers. Tenant hereby expressly waives any immunity to which Tenant may otherwise be entitled under any industrial or worker's compensation laws with respect to Landlord, its council members, agents, employees, contractors, or volunteers. Tenant's indemnity obligation set forth herein shall survive the termination or expiration of this Lease with respect to Losses arising out of injury or damage to person, animal or property which occurs during the Term.

17. Ownership of Improvements During and After Term.

17.1 Ownership During Term. During the Term of this Lease, all Animal Shelter Improvements constructed on the Property by Tenant as permitted or required by this Lease shall, subject to the terms of this Lease, be and remain the property of Tenant. All personal property, furnishings, fixtures and equipment installed by Tenant in, or on the Property which (i) are not attached to the Property so as to cause substantial damage upon removal, and (ii) are not necessary for the normal operation of the Animal Shelter, shall be the personal property of Tenant (the "**Personal Property**"). At any time during the Term, Tenant shall have the right to remove the Personal Property, provided that Tenant shall repair any damage caused by the removal of such Personal Property. Personal Property shall not include any portion or part of any building components or fixtures necessary for the operation of basic building systems for structures constructed on the Property including without limitation, restroom facilities (such as boilers, plumbing, electrical systems, lighting, sanitary fixtures and HVAC systems) which shall be deemed a part of the Animal Shelter Improvements.

17.2 Ownership at Lease Termination. Upon the expiration or earlier termination of the Lease, Section 20.3.1 of this Lease shall apply.

18. Damage or Destruction. In the event of material damage to or destruction of the Improvements, or any part thereof, Tenant shall promptly give Landlord notice of such occurrence and take all actions reasonably required to protect against hazards caused by such damage or destruction. In the event of any damage to or destruction of the Animal Shelter Improvements or facilities during the Term, Tenant shall elect, by written notice delivered to Landlord within sixty (60) days following the date of the occurrence of the damage, to either remove the Animal Shelter Improvements or restore and rebuild the Animal Shelter Improvements as nearly as possible to their condition immediately prior to such damage or destruction, subject to any restrictions imposed by changes in applicable laws. If Tenant elects to restore the Animal Shelter Improvements, Tenant shall commence diligently and continuously to carry out such rebuilding to full completion as soon as possible and shall commence reconstruction of the Animal Shelter Improvements within the earlier of one hundred twenty (120) days following the date of occurrence of the damage or the date upon which insurance proceeds are made available for such work.

19. Restrictions on Transfer, Assignment and Encumbrance; Termination.

19.1 Nothing in this Lease shall be construed as an agreement by Landlord to subordinate its fee interest in the Property or its right to rent payments hereunder or any other right of Landlord herein. Landlord shall have no obligation to encumber or otherwise subordinate its fee interest in the Property. Tenant shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey its leasehold interest hereunder or any portion of its interest in the Property, the Improvements, or this Lease voluntarily, involuntarily, by operation of law, or otherwise, without Landlord's prior written consent, which shall not be unreasonably withheld. No voluntary or involuntary assignee, subtenant, or successor in interest of Tenant shall acquire any rights or powers under this Lease absent such consent.

19.2 Tenant shall have the right to terminate this Lease without cause upon 90 days prior written notice to Landlord of Tenant's intent to terminate. Upon termination, Tenant shall also comply with its obligations identified in section 20.3.1, below.

20. Default.

20.1 Event of Default. Tenant shall be in default under this Lease upon the occurrence of any of the following ("**Events of Default**"):

20.1.1 Monetary Obligation. Tenant at any time is in default hereunder as to any monetary obligation (including without limitation, Tenant's obligation to pay taxes, assessments or the cost of utility services due on the Property or part thereof), and such default continues for sixty (60) days after the date upon which Landlord gives notice of breach.

20.1.2 Non-Monetary Obligations. Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Lease that is not a monetary obligation.

20.1.3 Use. If Tenant at any time ceases to use the Property in the manner prescribed in Section 4 of this Lease.

20.1.4 Insurance. Tenant fails to obtain and maintain any insurance required herein, and Tenant fails to cure such default within ten (10) calendar days following receipt of notice of breach;

20.1.5 Abandonment. Tenant abandons the Property or ceases to use it for the purposes authorized hereby for a period of sixty (60) calendar days or more or as established pursuant to Cal. Civil Code §1951.3.

20.1.6 Transfer. A voluntary or involuntary Transfer of all or any portion of Tenant's interest in this Lease without Landlord's written consent.

20.1.7 Not Applicable

20.1.8 Right to Cure. If Tenant defaults on its obligations, as described in Sections 20.1.2 – 20.1.8, above, then Tenant shall have the right to cure such default within sixty (60) days of receiving notice from Landlord of such default. If the default is of a nature that it cannot be cured within sixty (60) days, Tenant shall continue to have the right to cure such default if Tenant commences to cure the default within sixty (60) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred and eighty (180) days after receipt of notice of default.

20.1.9 Attachment. A writ of execution or attachment or any similar process is issued or levied against all or any part of the interest of Tenant in the Property and such execution, attachment or similar process is not released, bonded, satisfied, or vacated or stayed within sixty (60) calendar days after its entry or levy, such sixty (60) day period to be extended during any period of a bona fide appeal diligently pursued by Tenant.

20.2 Notice of Breach. Upon the occurrence of a default hereunder, the non-breaching party shall deliver a notice to the nonperforming party (the "**Notice of Breach**"), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default. Failure to give, or delay in giving, Notice of Breach shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder.

20.3 Remedies Upon Termination or Default. Upon the occurrence of any of the Events of Default that Tenant does not cure within the time prescribed herein, and in addition to any and all other rights or remedies of Landlord hereunder and/or provided at law or in equity, Landlord shall have the right to terminate this Lease and Tenant's possessory rights hereunder in accordance with section 20.2, above or in accordance with any applicable law. No remedy specified in this Lease shall be considered exclusive of any other remedy, but shall be cumulative.

21. Failure to Vacate. In the event that Tenant holds over, Landlord's remedies shall include any remedies as may be available to Landlord at law or in equity. In addition, Tenant shall indemnify, defend (with counsel approved by Landlord) and hold harmless Landlord from all Losses resulting from Tenant's failure to vacate pursuant to this Lease. This indemnity shall survive termination of the Lease.

22. Notices. All notices to be sent pursuant to this Lease shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section 22. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

To Landlord: City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437  
Attention: City Manager

To Tenant: The Mendocino Coast Humane Society  
19691 Summers Lane  
Fort Bragg, CA 95437  
Attention: Shelter Director

Either Party may change its address for receipt of notices by giving written notice of change to the other Party. Either Party may give personal notice to the other Party.

23. Short Form of Lease. A memorandum of lease substantially in the form attached hereto as Exhibit B shall be executed by Parties and recorded in the official records of Mendocino County.

24. Severability. The determination that a provision of this Lease is illegal or unenforceable shall not affect any other provision of this Lease.

25. Successors and Assigns. Subject to section 19 of this Lease, the provisions, covenants, conditions and obligations of this Lease shall extend to, be binding upon and inure to the benefit of the heirs, administrators, successors and assigns of the respective Parties to this Lease.

26. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Lease.

27. Time is of the Essence. Time is of the essence of this Lease and of each provision hereof.

28. Entire Agreement. This Lease contains all the agreements of the Parties hereto and supersedes all prior negotiations. There have been no representations by Landlord or understandings made between Landlord and Tenant other than those set forth in this Lease.

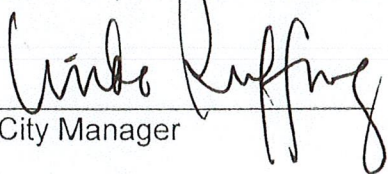
29. Amendment. This Lease may only be modified or amended by a written instrument duly executed by the Parties hereto.

30. Governing Law and Venue. This Lease shall be construed and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any actions, proceedings, or litigation to enforce or interpret the terms of this Agreement must be brought in a court of competent jurisdiction located in Mendocino County.

31. Non-Liability of Officials, Employees and Agents. No council member, official, employee, agent, representative or volunteer of the Landlord shall be personally liable to Tenant or its successors in interest in the event of any default or breach by Landlord or for any amount which may become due to pursuant to this Lease.

IN WITNESS WHEREOF, this Lease has been executed by the Parties hereto as of the date first shown above.


LANDLORD, CITY OF FORT BRAGG

By:   
City Manager

TENANT, MENDOCINO COAST HUMANE SOCIETY

By:   
President, Board of Directors

Attest:

By:   
City Clerk

Approved as to form:

By: See attached  
Michael Gogna, City Attorney

Approved as to form:

By: n/a  
Attorneys for Mendocino Coast Humane Society

## HUMANE SOCIETY LEASE DESCRIPTION

### "EXHIBIT A"

ALL THAT CERTAIN REAL PROPERTY situated, lying and being in Section 16, Township 18 North, Range 17 West, Mount Diablo Meridian, in the City of Fort Bragg, County of Mendocino, State of California, as shown on Amended Record of Survey Map, filed in Map Case 2, Drawer 29, Page 74, in the office of the County Recorder of said County and more particularly described as follows:

Commencing at the North 1/16 Section Corner as shown on said Record of Survey;

Thence South 88°28'15" East along the 1/16<sup>th</sup> section line a distance of 16.89 feet to the True Point of Beginning for this description;

Thence Southeasterly along said line South 88°28'15" East a distance of 909.33 feet;

Thence North 01° 31' 45" East a distance of 208.71 feet;

Thence northwesterly along a common line with the Animal Control Facility Property Lease North 88°28'15" West a distance of 367.42 feet to a tangent curve and the Southeasterly right of way of a 50 roadway and public utility easements as shown on said record of survey;

Thence, along a tangent curve to the right, having a radius of 50.00 feet, through a central angle of 90°00'00", an arc length of 78.54 feet;

Thence continuing along said southerly right of way North 88° 28' 15" West a distance of 52.20 feet;

Thence South 51° 43' 35" West a distance of 65.53 feet to a tangent curve;

Thence, along a tangent curve to the right, having a radius of 165.00 feet, through a central angle of 63°03'45", an arc length of 181.61 feet;

Thence North 65° 12' 40" West a distance of 48.02 feet to a tangent curve;

Thence, along a tangent curve to the left, having a radius of 75.00 feet, through a central angle of 90°47'17", an arc length of 118.84 feet to a point on a reverse curve, the radius point which bears North 65°59'57" West;

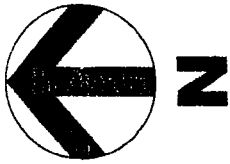
Thence Southwesterly along said curve, a radius of 125.00 feet, through a central angle of 48°52'51", an arc length of 106.64 feet to the True Point of Beginning and the end of this description.

Said property contains 3.04 acres more or less.

  
\_\_\_\_\_  
David W. Goble                      Director of Public Works  
P.L.S. No. 6493                      Expiration 6-30-11







Scale 1"=100'

50' ROADWAY AND PUBLIC UTILITY EASEMENT FOR INGRESS AND EGRESS BY THE GENERAL PUBLIC, AS SHOWN ON AMENDED RECORD OF SURVEY, MAP CASE2, DRAWER 29, PAGE 74, RECORDS OF MENDOCINO COUNTY

SECTION LINE 17

SECTION LINE 16

Page 17 of 24

SUMMERS LANE

NORTH 1/16 SECTION CORNER

S88°28'15"E  
16.89'

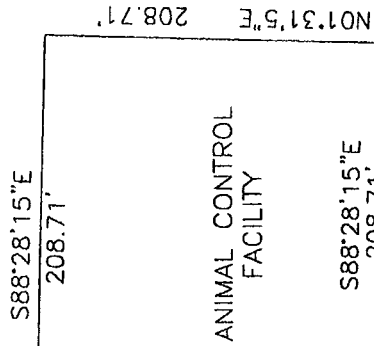
CURVE	DATA
C1	R=50.00 L=78.54 Δ=90°00'00"
C2	R=165.00 L=181.61 Δ=63°03'45"
C3	R=75.00 L=118.84 Δ=90°47'17"
C4	R=125.00 L=106.64 Δ=48°52'51"

CURVE TABLE

LINE TABLE

LINE	BEARING	COURSE
L1	S88°28'15"E	52.20'
L2	N51°43'35"E	65.53'
L3	S65°12'40"E	48.02'
L4	S01°31'45"W	208.71'
L5	S88°28'15"E	215.71'
L6	S88°28'15"E	111.71'
L7	N01°31'45"E	208.71'

Ⓐ 40'X60' EASEMENT FOR WELL OPERATION AND MAINTENANCE PER AMENDED RECORD OF SURVEY, MAP CASE 2, DRAWER 29, PAGE 74, RECORDS OF MENDOCINO COUNTY.



ANIMAL CONTROL FACILITY

S88°28'15"E  
208.71'

S88°28'15"E  
208.71'

367.42'

L5

L6

C1

L1

L2

C2

L3

C3

L4

EXISTING HUMANE SOCIETY LEASE

NEW LEASE AREA

HUMANE SOCIETY

491.91'

417.72'

909.33'

EXHIBIT 'A'  
NEW LEASE FOR  
HUMANE SOCIETY

**Exhibit B  
to Lease**

**Recording Requested by  
and when Recorded, Return to:**

City of Fort Bragg  
416 North Franklin Street  
Fort Bragg, CA 95437  
Attention: City Clerk

Exempt From Recording Fees Per  
Government Code §§6103, 27383

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**MEMORANDUM OF LEASE**

This Memorandum of Lease (this "**Memorandum**"), dated for reference purposes as of September 22, 2010, by and between the City of Fort Bragg a municipal corporation ("**Landlord**") and the Mendocino Coast Humane Society, a California non-profit (501(c)(3)) corporation, ("**Tenant**"), in reference to and consideration of that certain Lease dated as of September 22, 2010 ("**Effective Date**"), by and between Landlord and Tenant (the "**Lease**").

1. The purpose of this Memorandum is to provide notice of the existence of the Lease which is incorporated herein by this reference.

2. Landlord is the owner of fee title to the Property located at 19691 Summers Lane Road, in the unincorporated County of Mendocino, and within the City of Fort Bragg city limits, California, as more particularly described in Exhibit 1 attached hereto and incorporated herein by this reference (the "**Property**").

3. Pursuant to the Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Property, subject to all of the terms and conditions set forth in the Lease under the condition that the Property be used solely for the development and operation by Tenant of a public animal shelter for animal shelter purposes.

4. The term of the Lease commences on September 22, 2010 and unless sooner terminated pursuant to the provisions of the Lease, shall expire on the fiftieth (50th) anniversary of the Commencement Date.

5. Should Tenant fail to meet the conditions in the Lease, Landlord shall have the right to reconvey the Property back to Tenant. In any event, if Tenant shall fail to use the Property only for the purposes identified in the Lease, Landlord shall remove

municipal water and sewer services and related connections shall be removed if required, at Tenant's cost, subject to the terms and conditions contained in the Lease.

6. In the event of any conflict between this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

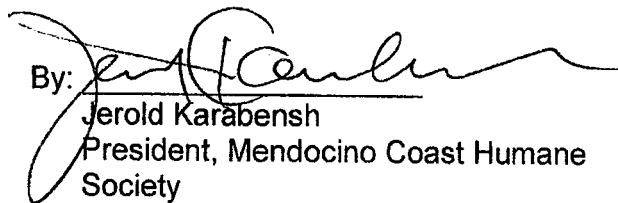
7. This Memorandum may be executed in counterparts, each of which shall be an original, and all of which together shall constitute one fully-executed agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

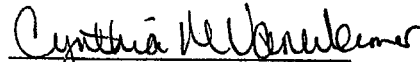
**"LANDLORD"**  
CITY OF FORT BRAGG

By:   
City Manager

**"TENANT"**  
MENDOCINO COAST HUMANE SOCIETY

By:   
Jerold Karabensh  
President, Mendocino Coast Humane  
Society

Attest:

By:   
City Clerk

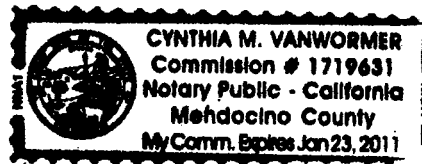
STATE OF CALIFORNIA  
COUNTY OF MENDOCINO

On September 22, 2010, before me, Cynthia M. VanWormer, a Notary Public, personally appeared Jerald Karabensh, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Cynthia M. VanWormer



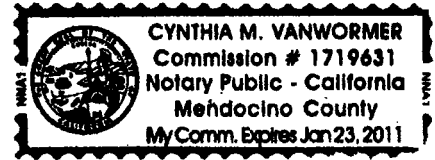
STATE OF CALIFORNIA  
COUNTY OF MENDOCINO

On October 21, 2010, before me, Cynthia M VanWormer, a Notary Public, personally appeared Linda Ruffing, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Cynthia M VanWormer



## HUMANE SOCIETY LEASE DESCRIPTION

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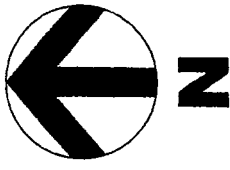
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David W. Goble                      Director of Public Works  
P.L.S. No. 6493                      Expiration 6-30-11





Scale 1"=100'

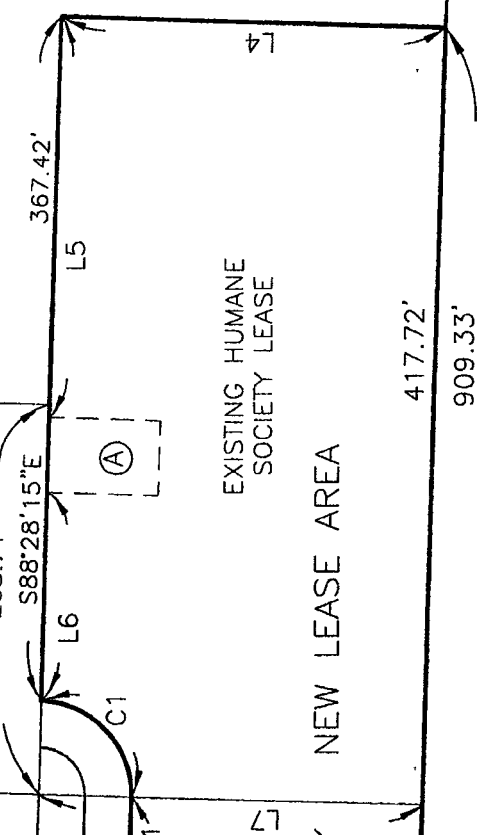
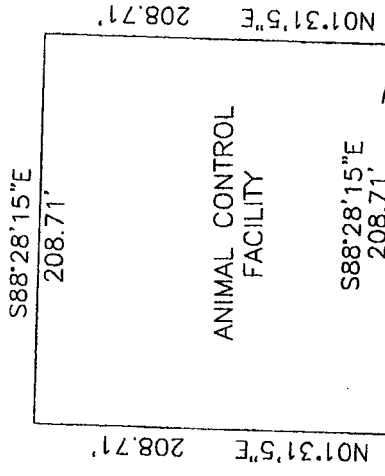
50' ROADWAY AND PUBLIC UTILITY EASEMENT FOR INGRESS AND EGRESS BY THE GENERAL PUBLIC, AS SHOWN ON AMENDED RECORD OF SURVEY, MAP CASE2, DRAWER 29, PAGE 74, RECORDS OF MENDOCINO COUNTY

SECTION LINE 17  
SECTION LINE 16

Page 24 of 24

SUMMER'S LANE

CITY OF FORT BRAGG



EXISTING HUMANE SOCIETY LEASE

NEW LEASE AREA

HUMANE SOCIETY

NORTH 1/16 SECTION CORNER

S88°28'15"E  
16.89'

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NEW LEASE FOR  
HUMANE SOCIETY