

PACIFIC COUNTY FACILITY USE AGREEMENT

South Pacific County Humane Society

THIS AGREEMENT is made by and between the SOUTH PACIFIC COUNTY HUMANE SOCIETY, 330 2nd Street N.E. / P.O. Box 101, Long Beach, Washington 98631, a private non-profit 501(C)3 corporation, and the Board of Pacific County Commissioners (the "BOARD") on behalf of Pacific County ("the COUNTY"), a political subdivision and municipal corporation of the State of Washington.

WHEREAS, the COUNTY owns a modular office building located at 318 N 2nd Street, Long Beach, Washington 98631 (the FACILITY) that is currently unoccupied; and

WHEREAS, as of March 2011 the County will no longer require use of the modular office building located at 318 N. 2nd Street, Long Beach, Washington 98631 (the FACILITY); and

WHEREAS, if left unoccupied in the coastal environment, the FACILITY would be subject to rapid disrepair and decay; and

WHEREAS, the SOUTH PACIFIC COUNTY HUMANE SOCIETY is currently operating an animal shelter adjacent to the FACILITY and is in need of office space to support its adjacent animal shelter activities; and

WHEREAS, the COUNTY would benefit from having an occupant maintain heat and utility services, and to clean and provide routine maintenance at the FACILITY.

WITNESSETH, that in consideration of the mutual benefits and covenants herein contained; it is agreed by and between the parties hereto as follows:

1. **OCCUPANCY OF FACILITY:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall retain the right to occupy the FACILITY for the specific purposes listed in Section 2 for the full term specified in Section 3, unless terminated earlier as per Section 4, of this FACILITY USE AGREEMENT.
2. **USE OF FACILITY:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall occupy and use the FACILITY for the express purpose of serving as an administrative office facility in support of its adjacent animal shelter activities. The FACILITY shall not be used as an animal shelter, nor shall it be used for the purposes of boarding or to occupy animals, other than approved service animals, of any kind.
3. **TERM:** Unless terminated by either party as per Section 4 of this FACILITY USE AGREEMENT, the term of this FACILITY USE AGREEMENT shall be for a period of ten (10) years from March 1, 2011 through February 28, 2021.

4. **TERMINATION BY EITHER PARTY:** Either party to this FACILITY USE AGREEMENT shall have the right to terminate this FACILITY USE AGREEMENT by presenting sixty (60) days written notice to the other party as specified in Section 16 of this FACILITY USE AGREEMENT.
5. **OBLIGATIONS OF THE SOUTH PACIFIC COUNTY HUMANE SOCIETY:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall continuously occupy the FACILITY and shall not sublet any portion thereof to any other party or organization without the express prior written approval of the COUNTY. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall maintain the FACILITY in a clean, safe and sanitary condition during the entire term of this FACILITY USE AGREEMENT. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall perform such interior and exterior cleaning and grounds maintenance as required to maintain the FACILITY free from a cluttered, unsightly and/or hazardous condition. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall provide, and pay for at its own expense, continuous electrical service, heating, air conditioning and ventilation at a level sufficient to prevent the freezing of pipes and/or accumulation of mold or other rot or decay that might be caused by lack of such heating and/or ventilation. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall cause to be completed at its sole expense annual maintenance of the heating/air conditioning/ventilation system and heat pump mechanical systems by a licensed heating/air conditioning maintenance firm, and shall pay for usual and customary routine maintenance supplies for said system. The SOUTH PACIFIC COUNTY HUMANE SOCIETY will inform THE COUNTY of any and all leaks, systems failures, or repair and maintenance needs in a timely fashion in order to minimize damage to the structure and/or systems. The SOUTH PACIFIC COUNTY HUMANE SOCIETY will be responsible to repair any damage to the FACILITY caused by the SOUTH PACIFIC COUNTY HUMANE SOCIETY, its employees, volunteers, program participants, clients, contractors, and/or visitors. In addition, the SOUTH PACIFIC COUNTY HUMANE SOCIETY shall at its sole expense repair the plumbing, electrical and associated systems fixtures as they may become worn and in need of replacement or repair due to normal wear and tear. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall not interfere with or disturb the full use of the adjacent County office building, maintenance facility, communication equipment, household hazardous waste facility, storage facilities, maintenance yard and/or parking lot by the County and any present or future County tenants, lessees, visitors or the general public.
6. **OBLIGATIONS OF THE COUNTY:** The COUNTY shall maintain water and sewer service to the FACILITY during the term of this FACILITY USE AGREEMENT. The COUNTY will maintain the FACILITY in an occupiable condition and shall make such structural repairs as required during the term of this FACILITY USE AGREEMENT to ensure continued occupancy. The COUNTY shall also maintain property insurance on the FACILITY, but shall not be required to provide insurance of SOUTH PACIFIC COUNTY HUMANE SOCIETY contents, or liability insurance for SOUTH PACIFIC COUNTY HUMANE SOCIETY operations and/or programs, employees, volunteers or governing board members. The COUNTY shall make available the use of the existing COUNTY parking lot adjacent to the FACILITY for shared use by the SOUTH PACIFIC COUNTY HUMANE SOCIETY and any existing or future occupants of the adjacent COUNTY facilities.

7. **INDEMNIFICATION:** Each of the parties to this FACILITY USE AGREEMENT agrees to indemnify and hold the other harmless from and against any and all loss and damage, and any and all claims, demands, suits, liabilities and payments, including cost of defense, arising in whole or in part, out of the negligent act or omission of an indemnitor, its officers, employees, agents or subcontractors, or the negligent act or omission of any person for which an indemnitor or subcontract is held liable. If any losses, damages, claims, demands, suits, liabilities and/or payments, including costs of defense, arise out of or result from the concurrent negligence of (a) the COUNTY, its officers, employees, agents, subcontractors or any other person for which the COUNTY is held liable, and (b) the SOUTH PACIFIC COUNTY HUMANE SOCIETY, its officers, employees, agents, subcontractors or any other person for which the SOUTH PACIFIC COUNTY HUMANE SOCIETY is held liable, this indemnity provision shall be valid and enforceable only to the extent of the negligence of any indemnitor's officers, employees, agents, subcontractors, or any other person for which an indemnitor is held liable.
8. **INSURANCE:** THE SOUTH PACIFIC COUNTY HUMANE SOCIETY shall provide proof of professional general liability insurance to the COUNTY in the amount of \$2,000,000 for each occurrence, for the term of this FACILITY USE AGREEMENT.
9. **FACILITY IMPROVEMENTS:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY may not alter the facility in any manner without express prior written approval of the COUNTY.
10. **NONDISCRIMINATION:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW – Washington's Law Against Discrimination and 42 U.S.C. 12101 et seq. – the Americans with Disabilities Act (ADA). In the event the SOUTH PACIFIC COUNTY HUMANE SOCIETY fails or refuses to comply with any nondiscrimination law, regulation, or policy, the AGREEMENT may be rescinded, canceled or terminated in whole or in part, and the SOUTH PACIFIC COUNTY HUMANE SOCIETY may be declared by the COUNTY ineligible for further Pacific County Funds or FACILITY USE AGREEMENTS. The SOUTH PACIFIC COUNTY HUMANE SOCIETY shall be given a reasonable time in which to cure any such noncompliance. Any dispute may be resolved in accordance with "Disputes" procedures set forth herein.
11. **EMPLOYMENT RELATIONSHIPS:** The SOUTH PACIFIC COUNTY HUMANE SOCIETY, its employees, volunteers or agents performing under this FACILITY USE AGREEMENT are not deemed to be employees of the COUNTY, nor volunteers or agents of the COUNTY in any manner whatsoever. No officer, employee, volunteer or agent of the SOUTH PACIFIC COUNTY HUMANE SOCIETY will hold themselves out as, or claim to be, an officer, employee, volunteer or agent of the COUNTY by reason hereof, nor will they make any claim, demand or application to or for any right or privilege applicable to an officer, employee volunteer or agent of the COUNTY. The parties agree that the COUNTY will not be responsible for the payment of any industrial insurance premiums or related claims or other benefits that may arise during the performance of services under this FACILITY USE AGREEMENT for any SOUTH PACIFIC COUNTY HUMANE SOCIETY

employee or volunteer, or for any consultant's, contractor's or subcontractor's employee(s) or agent(s) that has been retained by the SOUTH PACIFIC COUNTY HUMANE SOCIETY.

12. **ENTIRE AGREEMENT/MODIFICATIONS:** This FACILITY USE AGREEMENT represents all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this FACILITY USE AGREEMENT shall be deemed to exist or to bind any parties hereto. The COUNTY and the SOUTH PACIFIC COUNTY HUMANE SOCIETY may, from time to time, request changes in services being performed with these funds. Any such changes that are mutually agreed upon shall be incorporated herein by written amendment to this FACILITY USE AGREEMENT. Costs incurred in contravention of this Paragraph are the sole responsibility of the SOUTH PACIFIC COUNTY HUMANE SOCIETY.
13. **SEVERABILITY:** In the event any provision or any portion thereof contained in this FACILITY USE AGREEMENT is held to be unconstitutional, invalid or unenforceable, then said provision(s) or portion(s) thereof shall be deemed severed and the remainder of this FACILITY USE AGREEMENT shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.
14. **DISPUTE RESOLUTION:** Except as otherwise provided in this FACILITY USE AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute by majority vote. The team shall consist of (a) representative appointed by the COUNTY, (b) a representative appointed by the SOUTH PACIFIC COUNTY HUMANE SOCIETY, and (c) a third party mutually agreed upon by the two (2) appointed representatives. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.
15. **GOVERNING LAW AND VENUE:** This FACILITY USE AGREEMENT shall be construed and enforced in accordance with, and its validity and performance governed by, the laws of the state of Washington. The Superior Court of and for Pacific County, Washington shall be the venue for any suit between the parties arising out of the FACILITY USE AGREEMENT.

16. **NOTIFICATION**: Should the need arise during the term of this FACILITY USE AGREEMENT for either party to notify the other for a change in address or otherwise, the following contacts shall be used:

For the COUNTY:

Clerk of the Board of Pacific County Commissioners
P.O. Box 187
South Bend, WA 98586-0187

For the SOUTH PACIFIC COUNTY HUMANE SOCIETY:

South Pacific County Humane Society
330 2nd Street N.E. / P.O. Box 101
Long Beach, WA 98631-101

IN WITNESS WHEREOF legal representatives of both the SOUTH PACIFIC COUNTY HUMANE SOCIETY and the COUNTY have executed this FACILITY USE AGREEMENT on the date(s) so noted below.

SOUTH PACIFIC COUNTY HUMANE SOCIETY

Board of County Commissioners
Pacific County, Washington

Print Name Title

Norman B. Cuffel, Chair

Signature Date

Jon Kaino, Commissioner

ATTEST:

Print Name Title

Lisa Ayers, Commissioner

Signature Date

ATTEST:

Clerk of the Board Date

APPROVED AS TO FORM:

David J. Burke Date
Prosecuting Attorney