



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

www.co.washoe.nv.us

CM/ACM DC  
Finance NM  
DA pld ✓  
Risk Mgt. DT  
HR n/a

## STAFF REPORT

BOARD MEETING DATE: June 23, 2009

**DATE:** May 11, 2009

**TO:** Board of County Commissioners

**FROM:** Lt. Mitch Schneider, Interim Animal Services Manager  
Phone: 328-2142; email: mschneider@washoecounty.us

**THROUGH:** Dan St. John, P.E., Public Works Director  
David M. Solaro, Architect, P.E., Asst. PW Director - Facilities

**SUBJECT:** Approve Amended and Restated Lease Agreement between Washoe County and the Nevada Humane Society (NHS) for lease of space in the Regional Animal Services Center, thereby modifying existing terms and conditions of the Lease Agreement and First Amendment to Lease Agreement regarding lease payments by revising pro-rata share of occupancy; split for energy utility expense as it relates to the crematory; effective date for determining same and for such other terms and conditions as contained therein; and if approved, authorize Chairman to execute Agreement – Animal Services.  
(All Commission Districts.)

09-711

### SUMMARY

Through a previous Lease Agreement (the "Lease") and subsequent First Amendment to Lease Agreement, Washoe County Regional Animal Services and the Nevada Humane Society (NHS) cooperatively share space in the Regional Animal Services Center. This Second Amendment to Lease Agreement revises lease payments from NHS to Washoe County by amending the calculation for pro-rata share of space occupied by the Nevada Humane Society; recognizes a reduction in energy utility expense as it relates to the crematory; establishes July 1, 2008 as the effective date for these changes; and for such other terms and conditions as contained therein.

County Priority/Goal supported by this item: *Provide Excellent Public Services*

### PREVIOUS ACTION

1/10/2006 – Lease Agreement (the "Lease") between Washoe County and Nevada Humane Society; establishes NHS's pro-rata share of occupancy at 56% of the Washoe County Regional Animal Services Center; BCC #06-41, approved.

AGENDA ITEM # 28

1192

12/19/2006 – First Amendment to Lease Agreement between Washoe County and the Nevada Humane Society; demises additional kennels to NHS; increases to 60% NHS's pro-rata share of occupancy; BCC #06-1374, approved.

### BACKGROUND

- The Lease Agreement effected in January 2006 defined the pro-rata share of occupancy for NHS in the Regional Animal Services Center for purposes of determining the Supplemental Lease Payments. According to that document, in addition to other terms and conditions, the Supplemental Lease Payments are based on an amount that represents NHS's pro-rata share of expenses specifically related to operation of the facility. NHS's pro-rata share of occupancy in the Lease Agreement was established at 56% of expenses.
- The First Amendment to Lease Agreement, effected on December 19, 2006, increased NHS's pro-rata share of occupancy by 4% in addition to other terms and conditions stated therein. This 4% increase is attributable to NHS's lease of thirty-two dog kennels or an additional area comprised of approximately 1,292 square feet, thereby increasing NHS's pro-rata share of occupancy to 60%.
- Upon closer observation and having jointly occupied the Regional Animal Services Center for three years, it is quite apparent that different operating philosophies between Washoe County and NHS have resulted in a disproportionate burden to NHS for certain expenses incurred in the operation of the Regional Animal Services Center. Therefore, utility expense as it relates to use of the crematory requires modification to more accurately reflect distribution of this expense.
- Also, upon re-evaluation of both interior and exterior space at the Center, it has been determined that exterior courtyards should be weighted at a different (lower) rate than interior space since exterior space does not require the same level of temperature control as that required for interior space environments. This change in weighted factoring is applicable to both NHS and Washoe County Regional Animal Services.
- Any such changes resulting from redistribution of the pro-rata share of occupancy or splitting of energy expenses as it relates to use of the crematory should be effected retroactive to July 1, 2008, concurrent with the date such discrepancies were noted.

### FISCAL IMPACT

Upon approval and execution of this Second Amendment to Lease Agreement, Supplemental Lease Payments from the Nevada Humane Society to Washoe County will decrease. Rental income payments are posted to account: 500000-483000 and estimated at \$135,000 for FY 10.

09-711

1172

- Applying a different, higher weighted factor for maintenance and temperature control of interior space environments separate from a lower factor for exterior courtyard space, results in a more accurate and applicable pro-rata share of occupancy for NHS, thereby decreasing their pro-rata share of occupancy from 60% to 58%.
- In consideration of crematory use, it has been determined that NHS's share of utility associated with the crematorium is significantly less than that utilized by Regional Animal Services. Therefore, a formula was developed to recognize NHS's minimal need for crematory use relative to the number of animals handled and utility expense incurred.
- It is estimated this pro-rata occupancy reduction and utility split decrease will equate to approximately \$20,000 in reduced rental income reimbursements in the current fiscal year; and similarly, annually thereafter.

### RECOMMENDATION

It is recommended that the Board of County Commissioners approve the Amended and Restated Lease Agreement between Washoe County and the Nevada Humane Society (NHS) for lease of space in the Regional Animal Services Center, thereby modifying existing terms and conditions of the Lease Agreement and First Amendment to Lease Agreement regarding lease payments by revising pro-rata share of occupancy; split for energy utility expense as it relates to the crematory; effective date for determining same and for such other terms and conditions as contained therein; and if approved, authorize Chairman to execute Agreement.

### POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: Move to approve and execute the Amended and Restated Lease Agreement between Washoe County and the Nevada Humane Society (NHS) for lease of space in the Regional Animal Services Center, thereby modifying existing terms and conditions of the Lease Agreement and First Amendment to Lease Agreement regarding lease payments by revising pro-rata share of occupancy; split for energy utility expense as it relates to the crematory; effective date for determining same and for such other terms and conditions as contained therein.

cc Neeroo Manning, Finance  
Sadie Dukatz, Comptroller

09.711

1171

**AMENDED AND RESTATED LEASE AGREEMENT**  
**BETWEEN WASHOE COUNTY AND THE NEVADA HUMANE SOCIETY**

1. **PARTIES**

This Agreement is entered into between Washoe County, a political subdivision of the State of Nevada, ("County") and the Nevada Humane Society (NHS), a Nevada non-profit corporation, or collectively referred to herein as the "Parties".

2. **RECITALS**

2.1 **WHEREAS**, the County and NHS, entered into the original Lease Agreement on January 10, 2006, (a copy of which is attached as Exhibit 1 to this Second Amendment) pursuant to which the County and NHS, among other things, established a Lessor/Lessee relationship at the newly constructed Regional Animal Services Shelter, whereby the County agreed to lease to NHS certain space therein in order for NHS to conduct its operations; and

2.2 **WHEREAS**, the County and NHS, on December 19, 2006 entered into the First Amendment to the Lease Agreement ("First Amendment") (a copy of which is attached hereto as Exhibit 2), which amended the description of the demises premises and the description of the "Supplemental Lease Payments" contained in the Lease Agreement; and

69-711

1195

2.3 **WHEREAS**, the County and NHS agree that a further modification to the definition of "Supplemental Lease Payment" is appropriate in accordance with Section 4C of the June 17, 2003 "Lease Payment Agreement" and Section Four of the January 10, 2006 "Lease Agreement"; and

2.4 **WHEREAS**, the County has determined that the demised premises (as defined by the Lease Agreement constitutes fifty-eight (58%) percent of the facility; and

2.5 **WHEREAS**, County and NHS hereby desire to amend and restate, for future clarity sake, the language of the original January 10, 2006 Lease Agreement and Exhibits:

1. By incorporating the amendments set forth in the December 19, 2006 First Amendment to Lease Agreement, and
2. By modifying certain language of the Lease Agreement as set forth in this Second Amendment, and
3. By revising the "Description of Demised Premises" attached as Exhibit "A" to the original Lease Agreement (Exhibit 1 hereto) as set forth herein;

2.6 **WHEREAS**, This Amended and Restated Lease Agreement and Exhibits (the "Agreement") are intended to supersede the January 10, 2006 Lease Agreement and Exhibits in their entirety,

**NOW, THEREFORE**, the County and NHS hereby agree as follows:

**THIS AGREEMENT** ("Agreement") is made and entered into this 10th day of January, 2003, by and between WASHOE COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as "Lessor," or "County" and the NEVADA HUMANE SOCIETY, a Nevada non-profit corporation, hereinafter called "Lessee" or "NHS".

69-911

1196

**WITNESSETH:**

**WHEREAS**, Lessor will construct and be the sole owner of a facility to be known as the Regional Animal Services Shelter, or by such other name as the parties hereto mutually agree, located at 2825 Longley Lane, Reno, Washoe County, Nevada, the purpose of which will be to operate a consolidated regional animal services agency;

**WHEREAS**, the parties to this Agreement have entered into that certain Lease Payment Agreement, dated as of June 17, 2003 (the "Lease Payment Agreement"), pursuant to which the parties hereto are cooperating in the development of the facility;

**WHEREAS**, this facility will have certain operational space available for lease to Lessee to conduct operations of the Nevada Humane Society, which space the County has committed to offer to lease to the NHS pursuant to the terms of the Lease Payment Agreement;

**WHEREAS**, Lessee desires to lease from Lessor that certain space designated for use by the Nevada Humane Society (as described more fully below, the "Demised Premises");

**WHEREAS**, in connection with the lease of the Demised Premises, the Parties have entered into a definitive agreement (the "Professional Services Agreement") in connection with the operation of the Facility and this Lease pursuant to which NHS will perform certain services hereinafter delineated for the benefit of the County (the "NHS Services"), and also pursuant to which the County will perform certain services in cooperation with NHS and in conjunction with the provision of the NHS Services by NHS (the "County Services"); and

09-211

WHEREAS, the parties desire by this Lease to define their respective rights, duties and liabilities relating to the lease of the Demised Premises,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, all of which the parties promise to keep and perform, the parties hereto agree as follows:

**SECTION ONE**

**DESCRIPTION OF PREMISES; CONSTRUCTION; POSSESSION**

Lessor hereby demises unto Lessee that portion of the Facility which includes a minimum of 24,000 square feet of space designated for the sole use of Lessee more fully described on Exhibit A, together with any additional space exclusively reserved for NHS, and with the non-exclusive use of Common Areas, entrances, hallways, exterior grounds restrooms and parking in common with Lessor and other tenants of Lessor. Lessor shall tender possession of the Demised Premises to Lessee on or before the Commencement Date, provided, however, that Lessee may, with the permission of Lessor's contractor and at Lessee's sole risk, enter into the Demised Premises from time to time prior to completion of construction to visually inspect the Demised Premises and Common Areas; provided, further, that such entry shall be done in such manner as not to interfere with the construction. Notwithstanding such entry and Lessee's occupancy of the Demised Premises for the purposes of doing business, the term shall begin and rent shall be payable as set forth below, but the beginning of the Initial Term (as defined below) and payment of rental hereunder shall not preclude Lessee from requiring Lessor to correct defects in the construction work related to the Demised Premises at the earliest possible

09-711

1192

date in accordance with the approved plans and specifications governing the construction work.

Subject to the foregoing, Lessee shall accept the Demised Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Lessor represents and warrants the suitability of the Demised Premises for the provision of the NHS Services and the County Services. Except as expressly provided herein, in no event shall Lessor have any obligation for any defects (except for latent defects) in the Demises Premises. Lessor shall, promptly after the completion of construction of the Facility, at Lessor's expense, provide Lessee with a full copy of the permitted construction drawings of the Demises Premises.

## **SECTION TWO**

### **TERM OF LEASE**

This Lease shall be effective as of the Effective Date. The term of this Lease shall be one hundred eighty (180) months commencing on the first day that Lessor offers the Demised Premises for occupancy by Lessee, which offer shall be made in writing no less than fifteen (15) calendar days prior to such date (the "Commencement Date"), and terminating exactly one hundred eighty (180) months later (the "Initial Term") (subject to extension as provided in Section 3 below), unless earlier terminated upon mutual agreement of the parties or as otherwise provided herein.

## **SECTION THREE**

### **RENEWAL**

Lessee shall have the option of two (2) additional and separate renewal terms, provided Lessee is not in default at the time of the exercise of an option. Said renewals shall commence upon expiration of the Initial Term or any extension or renewal thereof

09-211

11/17



and shall each be for a period of one hundred twenty (120) months (a "Renewal Term"). NHS shall give written notice of its exercise of its option to renew at least one hundred twenty (120) days prior to the expiration of this Lease or any Renewal Term. The rent payable for each year of each such Renewal Term shall be calculated on the same basis as described in Section 4.2 below.

#### **SECTION FOUR**

##### **RENTAL**

Effective upon the Commencement Date, Lessee agrees to pay Lessor, at such place as Lessor shall designate from time to time in writing, supplemental lease payments (as more fully defined below, the "Supplemental Lease Payments") for the Demised Premises as follows:

1. Supplemental Lease Payments due for the first five (5) years of the Lease shall be based on an amount that represents NHS's Pro Rata Share (fifty-eight percent (58%)) of expenses that are specifically related to the Facility, which the County has determined, pursuant to Section 4C of the Lease Payment Agreement, is sufficient:

(i) to pay all of the operational expenses of the County related to NHS Space (and any additional space reserved for the exclusive use of NHS) plus

(ii) to pay NHS's pro-rata share of all expenses of the County related to Common Areas. Beginning as of July 1, 2008, and continuing while this Lease Agreement is effective, NHS's pro rata share of crematory energy cost will correspond to the number of "operational days" as designated below:

- Pro rata energy share will equal the total energy bill minus the estimated dollar cost per operational day (estimated \$375.00 for

09-11  
116-b

1000

FY 08-09) times the number of operational days to equal the total adjusted energy bill

- Fifty-eight (58%) percent of the adjusted energy bill plus ten (10%) percent of the estimated dollar cost per operational day (estimated \$375.00 for FY 08-09) times the number of operational days will equal the NHS share; the ten (10%) percent multiplier and dollar cost per operational day shall be subject to re-evaluation and change on annual fiscal year basis, based on the total number of animals handled on behalf of NHS and as mutually agreed upon by the parties.

(iii) -The Parties acknowledge and agree that changes to the shared expense or calculation of the crematory energy cost as stated above will be needed in the future. Because of the nature of these expenses, any such changes may be accomplished by written agreement between Washoe County, by and through the Washoe County Public Works Director and by the Executive Director of the Nevada Humane Society without further action by either the Washoe County Board of Commissioners or the Nevada Humane Society Board of Directors.

Such expenses shall not include costs, expenses, depreciation or amortization for capital repairs and capital replacements required to be made by Lessor hereunder; provided, however, that such repairs and replacements required to be made by Lessor hereunder shall not include subsequent capital improvements to NHS Space or Common Areas, including fixtures, equipment and furnishings related to such space or areas, as to which

09-11  
116-60

124

NHS shall pay its Pro Rata Share of the amortization thereof; and, provided, further, that NHS shall be solely responsible for repair and/or replacement of furniture and equipment (other than fixtures) in the NHS Space (notwithstanding the County's initial ownership of such furniture and equipment). Moreover, NHS shall pay its Pro Rata Share of the costs of repair or replacement of furniture and equipment in the Common Areas. In addition, such operational expenses shall not include costs related to the disposal of medical waste related to NHS's operations, which shall be the sole responsibility of NHS. Further, such expenses shall not include: (i) costs incurred in connection with the correction of defects in design or construction; (ii) interest, principal, or other payments on account of any indebtedness that is secured by any encumbrance on any part of the Facility, or rental or other payments under any ground lease; (iii) costs of selling, syndicating, financing, mortgaging or hypothecating any part of or interest in the Facility; (iv) depreciation; (v) Lessor's overhead costs, including equipment, supplies, accounting and legal fees, rent and other occupancy costs or any other costs associated with the operation or internal organization and function of Lessor as a governmental entity; (vi) fees or other costs for professional services provided by space planners, architects, engineers, and other similar professional consultants, real estate commissions and marketing and advertising expenses; (vii) costs of defending or prosecuting litigation with any party, unless a favorable judgment would reduce or avoid an increase in common area expenses; (viii) costs incurred as a result of Lessor's violation of any lease, contract, law or ordinance, including fines and penalties; (ix) late charges, interest or penalties of any kind for late or other improper payment of any obligation; (x) costs of removing Hazardous Substances (as defined below) or of correcting any other conditions in order to

09-211

comply with any environmental law or ordinance (but this exclusion shall not constitute a release by Lessor of Lessee for any such costs for which Lessee is liable pursuant to Section 17 of this Lease); (xi) costs for which Lessor is reimbursed from any other source; and (xii) costs related to any building or land not included in the Facility, including any allocation of costs incurred on a shared basis, such as centralized accounting costs. The County shall at least annually estimate the amount of the Supplemental Lease Payments due in the ensuing year and such Supplemental Lease Payments shall be paid in twelve (12) monthly installments on the first day of each month, commencing with first day of the first calendar month following the Commencement Date.

Such Supplemental Lease Payments shall be payable monthly in arrears in accordance with the terms set forth above; provided, however, that, at Lessor's option, it may delay the payment due date from the first of each month to such other date later in such month when bills for utilities related to operational expenses shall be available.

2. Supplemental Lease Payments due after the first five years shall be determined by negotiation between the parties; but at a minimum shall be sufficient to pay the expenses described in Section 1(i) and (ii) above.

3. All Supplemental Lease Payments shall be made payable to Washoe County, Department of Public Works, at P.O. Box 11130, Reno, NV 89520-0027. Supplemental Lease Payments or other amounts payable hereunder shall be due the first (1st) business day of each month (if not extended pursuant to Lessor's option set forth above) and if not received by the Lessor or properly deposited into the U.S. Mail system by the tenth (10th) calendar day (or the tenth (10<sup>th</sup>) calendar day following such

09-211

1203

extension), Lessee agrees to pay a surcharge equivalent to five (5%) percent of the monthly Supplemental Lease Payment amount. Notwithstanding the foregoing, no late charge shall be assessed with respect to the first two (2) late payments of rent in a twelve-month (12) period.

## SECTION FIVE

### COMMON AREA MAINTENANCE

A. Lessor shall maintain the Facility and Common Areas in good condition and repair. The term "Facility and Common Areas" means all interior and exterior areas and structures within the exterior boundaries of the Facility, including that which is provided and designated by the Lessor from time to time for the general use and convenience of the Lessee and other tenants of Lessor.

B. Facility and Common Area maintenance shall include, but is not limited to, all such maintenance, repair and construction work as shall be required to preserve and maintain the utility of the Facility and Common Area; maintenance, repair, resurfacing and painting of pedestrian walkways, throughways, roadways, service corridors, parking areas and patios; maintenance and servicing of elevators, heating, ventilating and air conditioning systems; sweeping, snow removal, trash disposal and other janitorial services of the Common Areas; maintenance and servicing of sprinkler systems, gardening and landscaping areas; lighting and all utilities utilized in connection therewith; maintenance and repairs of exterior roofs, exterior roof coverings, exterior supporting structures, walls and overhead roll-up doors; exterior and interior window cleaning; painting; cleaning of hard surface floors and carpeted areas; telephone systems, excluding those necessary for the operation of Lessee's operations and use; other mechanical systems such as plumbing, security and electrical; and modifications required for compliance with any statutes, ordinances and/or regulations, including required changes in installations for supply of utilities or sanitary facilities or other public

09-711

facilities; and other maintenance in Lessor's reasonable judgment necessary for the operation of the Facility and Common Areas.

#### SECTION SIX

#### **USE OF PREMISES**

A. Lessee shall use the Premises to conduct activities and operations of the Nevada Humane Society, including but not limited to the provision of the NHS Services, and shall not use or permit said Demised Premises or any part thereof to be used for any other purpose.

B. Lessee shall not conduct or at any time knowingly permit its employees, agents or visitors to conduct activity on the Premises that is unlawful or in violation of any applicable federal or state statute, code or regulation.

#### SECTION SEVEN

#### **ALTERATIONS AND IMPROVEMENTS**

A. The parties hereby acknowledge that upon Lessee's acceptance of possession of the Demised Premises, the Demised Premises are in good condition and are architecturally acceptable to Lessee, except for items that are Lessor's express responsibility herein and any punchlist items agreed to in writing by Lessor and Lessee, and shall not be altered, repaired or changed except as provided herein and in accordance with Section 4H of the Lease Payment Agreement.

B. Without the prior written consent of Lessor, Lessee agrees that it shall not alter the Premises or erect partitions, install or change any doors or windows, or place any nails, screws or other implements or fasteners into the wood work or walls, except such items, changes or installations as are necessary to suitably decorate or make the Premises attractive or useful for the purposes intended or such items, changes or installations as are contemplated and permitted by the terms of the Lease Payment Agreement, including but not limited to NHS's rights pursuant to Section 4F and 4G thereof. Subject to the terms given in the previous sentence, upon Lessor's request,

09-211

12.05

Lessee shall prepare plans and specifications of such work and submit the same to Lessor for its approval prior to making such alterations or improvements. Said approval will not be unreasonably withheld.

C. Except as otherwise provided in accordance with the terms and conditions of the Lease Payment Agreement, including but not limited to Section 3D thereof, the parties agree that all the erections, additions, fixtures and improvements, except only movable equipment, office furniture, shelving and any decorative items that can be removed without substantially affecting the integrity of the Facility, made in or upon said Demised Premises shall remain upon the Demised Premises at the termination of said term by lapse of time or otherwise, without compensation to Lessee.

D. The erection, construction, installation or making of any improvements shall be accomplished in a workmanlike manner and in compliance with all applicable federal, state, county and municipal laws and regulations. Lessee shall keep the Demised Premises free from any liens arising out of any and all work that it may perform, or materials furnished, or obligations incurred by Lessee. Lessee shall have thirty (30) days from the date of notice of said lien, as provided by Lessor, to remove said encumbrance without breaching the provisions of this Lease.

## SECTION EIGHT

### **LESSOR IMPROVEMENTS**

A. Subject to the requirements of Section 4H of the Lease Payment Agreement, Lessor reserves the right from time to time and at its own expense to make such improvements, alterations, renovations, changes, and repairs in and about the Facility, including the Demised Premises, as Lessor shall deem necessary or desirable; provided, however, that Lessor shall, prior to entering the Demised Premises, give Lessee as much prior notice as is reasonably practicable, but no less than forty-eight (48) hours' notice of its intent to do so, and, except where such improvements, alterations, changes and repairs unreasonably and/or materially disrupt Lessee's use and peaceful enjoyment

116-60

1206

of the Demised Premises, Lessee shall make no claim against Lessor for abatement of rent for interference with Lessee's leasehold interest or for loss or damage to its business during such improvements, alterations, changes and repairs.

B. Lessor shall make all improvements in a safe, workmanlike manner so as not to prove hazardous to tenants, animals and/or the public.

C. Lessor shall keep the foundations and roof in good condition and repair, and will make all repairs necessary to maintain the structural soundness of the floors and walls during the term hereof. Lessor shall make all building changes or installations required to conform with applicable laws and ordinances in effect from the Commencement Date through the term. In the event Lessor shall fail or neglect to make any repairs that under the terms of this Lease Lessor is required to make, and in the event that such failure or neglect shall continue notwithstanding written notice from Lessee and the lapse of a reasonable period of time to commence and complete such repairs, Lessee may cause such repairs to be made or completed and may deduct from subsequent installments of Supplemental Lease Payments an amount sufficient to reimburse it for reasonable out-of-pocket expenses incurred in making or completing such repairs, accompanied by appropriate documentation indicating costs associated with such repairs. Lessee shall not commit any undue waste in, on and around the Demised Premises and shall conform with all applicable laws and ordinances respecting the use and occupancy thereof.

#### SECTION NINE

#### **MAINTENANCE, REPAIRS AND INSPECTIONS**

A. Lessor shall be responsible for performing periodic maintenance to the interior of the Demised Premises in a reasonable and timely manner. Lessor, however, shall not be responsible for making repairs or replacements caused by the negligence or willful destruction by Lessee, Lessee's contractors, agents or employees.

09-211

1207



B. Lessor shall provide exterior and interior window cleaning and shall keep the Demised Premises at all times in a neat, clean and sanitary condition.

C. Lessor shall maintain parking areas in a clean and safe condition, including snow removal, the roof, sidewalks, windows, exterior walls and overhead roll-up doors of said Facility.

D. Lessor shall provide reasonable maintenance, repair and replacement of all plumbing, including plumbing fixtures, elevators and central mechanical equipment, water heaters, heating, ventilating and air conditioning equipment necessary to provide service to the Facility and maintain the Demised Premises in a reasonable and safe manner and in full compliance with all mandated federal, state and local regulatory requirements.

E. Lessee shall permit Lessor or its authorized agent to enter into and upon the Demised Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs or maintaining the Facility; provided, however, that in the event Lessor intends to make repairs or perform maintenance that would materially disrupt Lessee's use and enjoyment of the Demised Premises. Lessor shall give advance notice thereof to Lessee as soon as practicable, but, absent exigent circumstances, in no event less than fifteen (15) days in advance of such repairs or maintenance.

#### SECTION TEN

#### **UTILITIES, CUSTODIAL, TELEPHONE**

A. All gas, electricity, water, sewer, other public utilities and trash/garbage disposal for the normal intended use set forth in this Lease, shall be paid at the sole cost and expense of Lessor but included in the operating expenses of the Facility.

B. Lessor shall provide regular interior trash removal and janitorial services to all areas of the Demised Premises (other than the areas excluded by mutual agreement of the parties pursuant to standard operating procedures). In addition, Lessor shall provide daily cleaning and sanitizing of public restrooms and other Common Areas,

09-211

1208

excluding holidays and other periods of closure recognized and observed by either Lessor or Lessee.

C. Lessee shall provide routine cleaning and sanitizing of all kennels, cages, pens, enclosures and animal holding areas including animal use facilities such as exercise/acquaintance areas, infirmary and rehabilitation areas on no less than a daily basis in areas specifically designated for use by Lessee.

D. Lessor shall provide routine cleaning and sanitizing of all kennels, cages, pens, enclosures and animal holding areas including animal use facilities such as exercise/acquaintance areas, infirmary and rehabilitation areas on no less than a daily basis in areas specifically designated for use by Lessor.

E. Except as otherwise mutually agreed, Lessee is responsible for and shall provide all of its telephone service needs of any and all kinds at its sole cost and expense, including installation and monthly service charges for equipment, fees, line and toll charges or any changes thereto specifically requested by Lessee.

F. Lessor shall pay any and all real property taxes and/or sewer assessment fees applicable to the real property upon which the Facility is located.

**SECTION ELEVEN**

**SIGNS, MONUMENTS, ARTIFACTS OR OTHER SYMBOLIC RECOGNITION**

Subject to Section 4F of the Lease Payment Agreement, Lessee agrees that no signs, advertisements, monuments, artifacts or other symbolic recognition shall be painted or affixed to any part of the outside of the Facility in which the Premises are situated without the consent of Lessor, which consent shall not be unreasonably withheld.

**SECTION TWELVE**

**WAIVER**

Any failure on the part of either party to take action against the other for any breach or covenant herein shall not be construed to constitute a waiver of any other or subsequent breach.

09-711

1209

**SECTION THIRTEEN**

**DESTRUCTION OF PREMISES**

In the event of a partial destruction of said Demised Premises or the Facility during the said term, from any cause, Lessor shall forthwith repair the same within two hundred ten (210) days, provided such repair can be made within said period under the laws and regulations of the state, federal, county or municipal authorities. If required repairs are commenced promptly, this Lease shall not be modified, except that Lessee shall be entitled to a proportionate reduction of Supplemental Lease Payments if, in Lessee's reasonable judgment, a portion of the Demised Premises are rendered unusable or substantially impaired while repairs are being made. If such repairs cannot be made in two hundred ten (210) days, this Lease may be terminated at the option of either party. Either party shall notify the other of such party's election to terminate the Lease within twenty-one (21) days following the date Lessee receives written notice from Lessor of its inability to repair the Facility within the two hundred ten (210) day period due to such damage or destruction. Such termination shall be without prejudice to the exercise by either party of any available remedies related to such termination. A total destruction of the Facility in which the Demised Premises are situated shall terminate this Lease. This provision is not intended to affect the rights of either party to seek recovery against the person responsible for the damages, subject, however, to the provisions of Section 14 below.

09-111

**SECTION FOURTEEN**

**CONDEMNATION**

In the event that any part of the Demised Premises or the Common Areas of the Facility shall be condemned or taken by any municipal, county, federal, state or other authority for any purpose, and if, in the reasonable judgment of Lessor or Lessee such condemnation would prevent or materially interfere with such party's use of such part of the Demised Premises or the Facility, then the term of this Lease shall cease on the part

12/10

so taken from the day the possession of that part is required for any public purpose. The Supplemental Lease Payments shall be paid up to that day and thereafter the Lessee or the Lessor shall have the right to either cancel this Lease or to continue in the possession of the remainder of the same under the terms herein provided, except that the Supplemental Lease Payments shall be reduced in proportion to the area of that portion of the Demised Premises or Common Areas of the Facility taken for such public purpose. All damages awarded as compensation for diminution in value to the fee of the Demised Premises shall belong to and be the property of Lessor. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damages to Lessee by reason of the condemnation, including but not limited to damages to Lessee resulting from loss of the value of Lessee's leasehold interest, loss of the use of the Demised Premises, which use is intended in part to compensate NHS for the NHS Commitment, and for or on account of any cost or loss to which Lessee might be put in removing Lessee's furniture, fixtures, equipment and leasehold improvements.

**SECTION FIFTEEN**

**INDEMNIFICATION**

A. Pursuant to Nevada Revised Statutes ("NRS"), Chapter 41, and without waiving any provisions thereof, the parties hereto agree that each will be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost or judgment made against that party arising from any negligent act or negligent failure to act by any of that party's employees, agents or servants in connection with work or responsibilities performed pursuant to this Lease.

B. Pursuant to Chapter 41 of the NRS, and without waiving any provisions thereof (except for the provisions of NRS 41.033), the parties hereto agree to hold harmless, indemnify and defend each other from and against any and all losses, liabilities

09711

121

or expenses of any nature to the person or property of a third party to which each may be subjected as a result of any claim, demand, action or cause of action arising out of the negligent acts, errors or omissions on the part of the employees, agents or servants of the other party.

## SECTION SIXTEEN

### INSURANCE

A. Each party hereto shall provide for their financial responsibilities regarding their respective liabilities hereunder through the purchase of insurance or the provision of a self-funded program pursuant to Nevada law.

B. Lessor will obtain and maintain property and fire insurance on the Facility on an all risk, replacement cost basis for full replacement coverage of the Facility and at such additional amounts as Lessor may deem prudent. Lessor shall develop a charge for losses within its deductibles under the property insurance charge in the Facility's operating expenses. Lessor shall cause Lessee to be named as an additional insured on Lessor's insurance policies related to the Facility.

C. Lessor (for itself and on behalf of its invitees, employees, contractors and agents) hereby expressly waives and releases any cause of action or right of recovery that Lessor may have hereafter against the Lessee for any loss or damage to the Demised Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk to the extent covered by insurance.

D. Lessee shall obtain and maintain fire insurance on all contents owned by Lessee located at the Demised Premises.

E. Lessee (for itself and on behalf of its invitees, employees, contractors and agents) hereby expressly waives and releases any cause of action or right of recovery that Lessee may have hereafter against the Lessor for any loss or damage to the Demised

D9-711

212

Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk to the extent covered by Lessee's insurance or self insured program.

F. In the event Lessee's occupancy causes any increase of premium for Lessor's insurance on the Demised Premises, or any parts thereof, above the rate applicable for facilities and operations similar to those contemplated pursuant to this Lease, Lessee shall have fifteen (15) days after receipt of written notification from Lessor of such increase to correct or mitigate said circumstances that resulted in the need for a premium increase. If Lessee is unable to mitigate or correct said circumstances, Lessee shall pay the amount of the increase in the premium.

#### SECTION SEVENTEEN

#### **HAZARDOUS SUBSTANCES**

A. Lessee shall not cause or permit any Hazardous Substances (as defined below) to be used, released, stored, manufactured or disposed of in or upon the Demised Premises or the Facility, except in the minimum quantities as are customary and usual in connection with Lessee's permitted use, including without limitation medical waste generated by the NHS operations as contemplated hereunder. If the Demised Premises or the Facility become contaminated as a result of a violation by Lessee of this Section or for which Lessee is otherwise legally liable, Lessee shall indemnify, defend and hold Lessor harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments, together with Lessor's reasonable attorney's fees.

B. If Hazardous Substances have been used, released, stored, manufactured or disposed of in or upon the Demised Premises or the Facility, or if the Demised Premises or the Facility are or become contaminated in any manner for which Lessor is legally liable, Lessor shall indemnify, defend and hold Lessee harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for

09-911

investigation, removal, remediation and restoration mandated by federal, state and local governments, together with Lessee's attorney fees.

C. Lessor warrants and represents to Lessee that the condition of the Demised Premises and the Facility complies with all relevant environmental laws in that no Hazardous Substances have been disposed of or are located on the Demised Premises or elsewhere within the Facility in violation of applicable law.

D. "Hazardous Substances" shall mean all toxic, ignitable, contaminated, reactive or corrosive substances regulated by federal, state or local governments.

### **SECTION EIGHTEEN**

#### **ATTORNTMENT AND NON-DISTURBANCE**

A. Lessee shall in the event of the sale or assignment of Lessor's interest in the Facility, or in the event of any proceeding brought for the foreclosure of the Demised Premises, attorn to the purchaser or assignee and recognize such purchaser or assignee as Lessor under this Lease.

B. Any purchaser, assignee, or other party acquiring Lessor's interest in the Facility, shall agree to recognize the validity and enforceability of this Lease and shall agree that notwithstanding any default by Lessor with respect to any security document, Lessee's possession, quiet enjoyment and all of Lessee's rights under this Lease in and to the Demised Premises shall not be disturbed by such purchaser, assignee or other party unless Lessee is in default under the terms of this Lease.

### **SECTION NINETEEN**

#### **QUIET ENJOYMENT**

Lessee, while in compliance with the terms and covenants herein, is entitled to the quiet enjoyment and peaceful possession of the Demised Premises for the term hereby created, and Lessor shall warrant and defend Lessee in such enjoyment and possession.

**SECTION TWENTY**

**ASSIGNMENT AND SUBLEASE**

This Lease may not be assigned or the Demised Premises sublet without the prior written consent of Lessor. In addition, no less than ninety (90) days prior to assignment of this Lease or lease of any portion of the Facility to any additional tenant, Lessor shall give Lessee reasonable written notice of such proposed assignment or lease, including a description of the proposed assignee or tenant. Lessor hereby warrants that any such assignment or lease shall conform to and not interfere with the purposes of this Lease and the other agreements between the parties hereto.

**SECTION TWENTY-ONE**

**NOTICES**

Notices hereunder shall be effective on the date of delivery if delivered to a party hereto at the address listed in this Section, or to any new address located in Washoe County, Nevada, provided by that party by notice delivered pursuant to this Section, and shall be effective three (3) days after the date of mailing thereof if mailed by first class, postage prepaid mail, certified return receipt requested. Unless otherwise provided, notice provided to each party shall be as follows:

If to the County:

(for physical delivery)

(for US Mail)

Washoe County, Nevada  
Attn: Director of Public Works  
1001 E. 9<sup>th</sup> Street  
Reno, NV 89512  
P.O. Box 11130  
Reno, NV 89520  
775-328-2040  
775-328-3699 (fax)

With a copy to:

Washoe County, Nevada  
District Attorney's Office-Civil Division  
50 W. Liberty (Short Tower), Third Floor  
Reno, Nevada 89501  
Attn: Assistant District Attorney, Civil  
775-337-5700  
775-337-5732 (fax)

116-60

1215



If to NHS to:

Nevada Humane Society  
2825 Longley Lane, Suite B  
Reno, NV 89502  
Attn: Executive Director  
775-856-2000  
775-284-7060 (fax)

**SECTION TWENTY-TWO**

**ATTORNEY'S FEES**

Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Lease, the prevailing party shall be entitled to recover such amounts as may be adjudged to be reasonable attorney's fees for the services rendered to the prevailing party in such action or proceeding, together with costs incurred.

**SECTION TWENTY-THREE**

**TERMINATION**

A. Upon termination of this Lease, Lessee shall quit the Demised Premises peaceably, with no damage to the Demised Premises, normal wear and tear and damage outside the control of Lessee excepted, and shall remove all of Lessee's personal property from the Demised Premises.

B. The failure by Lessee to make any payment due hereunder or the failure of either party hereto to observe or perform any covenants, conditions or provisions of this Lease required to be made, observed or performed by such party, after thirty (30) days' written notice of such default shall constitute a default of this Lease by such party; provided, however, that if the nature of the default (other than the payment of money) is such that more than thirty (30) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if such party commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Upon default, the non-defaulting party may pursue all remedies available

09-11

under Nevada law, including termination of the Lease and recovery of all damages caused by such default.

**SECTION TWENTY-FOUR**

**CHOICE OF LAW; VENUE**

This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada. The parties consent to the personal jurisdiction of any state or federal court of competent jurisdiction located in Washoe County, Nevada and to the service of process by any means authorized by any such state or federal court under the laws of the State of Nevada. The exclusive venue of any action, proceeding or counterclaim arising out of or in connection with this Agreement shall be Washoe County, Nevada.

**SECTION TWENTY-FIVE**

**EFFECT OF AGREEMENT**

A. Except as otherwise specifically provided herein, this Lease constitutes the entire contract between the parties with respect to the subject matter hereof, and no obligation other than those set forth herein will be recognized unless endorsed hereto in writing.

B. Each of the covenants, warranties, and agreements herein contained are binding on the parties hereto, their successors, assigns and legal representatives. In the event of any breach of these covenants, warranties and agreements by a party during the duration of this Lease, whether or not discovered by or known to the other party during the lease term, such other party expressly reserves unto itself the right to pursue appropriate legal action against the party at fault to correct or cure said breaches or deficiencies.

09-711

1017

**SECTION TWENTY-SIX**

**DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

A. Lessee, Nevada Humane Society, certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions or providing the NHS Services contemplated herein by any federal department or agency:

2. Have not within a three year period preceding this Lease been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; or for violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Understand that a false statement on this certification may be grounds for termination of the Lease. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to five (5) years, or both.

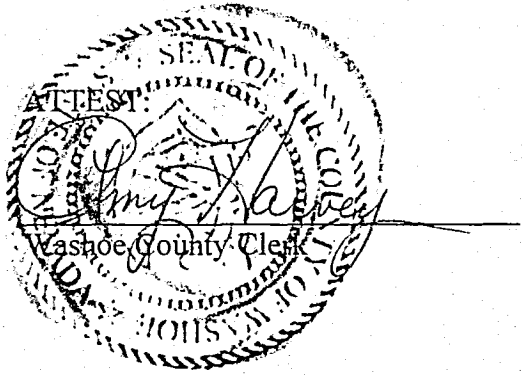
09-211

1018

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date and year first above written.

**LESSOR:** WASHOE COUNTY, a political subdivision of the State of Nevada

By: *David E. Humke* 6/23/09  
David E. Humke, Chairman  
Board of County Commissioners



**LESSEE:** NEVADA HUMANE SOCIETY, a Nevada non-profit corporation

By: *Bonney Brown*  
Bonney Brown  
Its: EXECUTIVE DIRECTOR

116-60

**EXHIBIT "A"**

DESCRIPTION OF DEMISED PREMISES

A minimum of 24,000 square feet of space within the Washoe County Regional Animal Shelter designated for the sole use of Lessee with any additional space exclusively reserved for Nevada Humane Society (NHS), together with the non-exclusive use of the common areas which include the education rooms, catering kitchen, public restrooms, entrances, hallways, staff lounge, staff restrooms and locker areas, exterior grounds and parking in common with Lessor.

The demised premises also includes Additional Kennel space which was demised to the Lessee and became part of the demised premises on January 1, 2007 under the following terms and conditions:

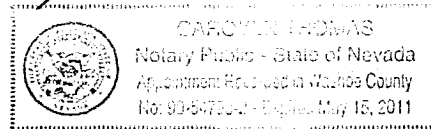
Lessor tendered possession of the Additional Kennels to Lessee on January 1, 2007. For purposes of the Lease of the Additional Kennel space, the lease term during which the additional kennels shall be part of the demised premises shall be for a period of three (3) years commencing January 1, 2007. At the end of that three year period, the parties may mutually agree to an extension for one additional three (3) year period. Upon re-evaluation at the end of such term the parties may mutually agree to continue extending such term for additional successive three (3) year periods thereafter; provided, however, that any such renewal term shall not extend beyond the term (including any renewals thereof) of the Lease. In the event that the parties fail to agree on such an extension, the amendment relative to the Additional Kennel space shall terminate, and the NHS pro rata share shall revert to fifty-six (56%).

09711  
116-60

STATE OF Nevada )  
 )  
 ) :SS.  
COUNTY OF Washoe )

On this 19 day of May, 2008 before me a Notary Public in and for the County of Washoe, State of Nevada, personally appeared, Bonney Brown known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he/she executed the same freely and voluntarily on behalf of Lessee, for the uses and purposes therein mentioned.

Carolyn Thomas  
Notary Public



STATE OF Nevada )  
 )  
 ) :SS.  
COUNTY OF Washoe )

On this 23<sup>rd</sup> day of June, 2008 before me a Notary Public in and for the County of Washoe, State of Nevada, personally appeared David E. Humke, Chairman, Board of County Commissioners, known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily on behalf of Lessee, for the uses and purposes therein mentioned.

Vita Lucioni  
Notary Public

09-711

STATE OF Nevada )  
 )  
 ) :ss.  
 )  
COUNTY OF Washoe )

On this 23<sup>rd</sup> day of June, 2008 before me a Notary Public in and for the County of Washoe, State of Nevada, personally appeared Amy Harvey, Washoe County Clerk, known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that she executed the same freely and voluntarily on behalf of Lessor, for the uses and purposes therein mentioned.



Rita Lencioni  
Notary Public )

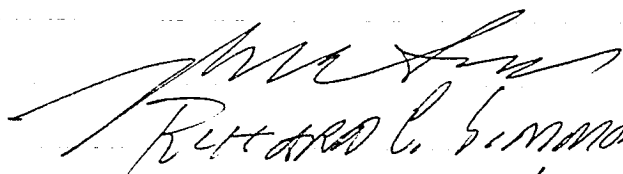
09-711

COMMISSIONER HUMKE

RE: AGENDA ITEM 28, 23 JUN 09

MR. ST. JOHN HAS PROVIDED ME WITH THE "MISSING" ATTACHMENTS TO THE RESTATED LEASE AGREEMENT BETWEEN "WASHOE COUNTY AND THE NEVADA HUMANE SOCIETY."

I HAVE REVIEWED THESE DOCUMENTS AND HAVE MADE NOTES IN RED ON A COPY OF THE ~~PRE~~ SUBMISSION I MADE REGARDING THIS AGENDA ITEM (ATTACHED) FOR YOUR AND THE OTHER COMMISSIONERS' CONSIDERATION.

  
RICHARD C. SIMMONS, DVM, MS  
23 JUN 09

09-711

Date Rec'd: 6.23.09  
From: Simmons  
Item #: 28  
Description: Notations & ack letter  
handwritten

1203



COMMENTS REGARDING AGENDA ITEMS 27 & 28, WASHOE COUNTY BOARD OF COMMISSIONERS MEETING 23 JUNE 2009

(copies of the materials reviewed were downloaded from the Washoe County Board of Commissioners' Web site, [http://www.co.washoe.nv.us/large\\_files/agendas/062309/agenda.pdf](http://www.co.washoe.nv.us/large_files/agendas/062309/agenda.pdf), on 20 June 2009)

Personal Comments and Concluding Request Submitted by Richard C. Simmonds, D.V.M., M.S.  
Washoe County Resident; Mailing Address: P.O. Box 9059, Reno, NV 89507-9059

I. Agenda Item 27 – Presentation and Status Update on the Regional Animal Services Program

Page 3 of 4, first full paragraph: It is stated in this paragraph, starting on line 4 that “The recent ‘3-Year Assessment’ indicates that the condition of the facility and operational procedures pass, and in many cases surpass, industry standards.” There is no indication in the text of who did the assessment (but there is a reference to the American Humane Association in the attached PowerPoint® slide 9) nor of what specific “industry standards” are used as the reference standards for the comparison. [Also, nowhere in the material supplied is there any reference to the 3-year assessment required {by the current Professional Services Agreement} of the NHS, nor who did their assessment and what standards were used for their assessment.]

Page 3 of 4, first paragraph under the heading “No-kill community”: This paragraph contains a reference to “the many dedicated and highly successful rescue groups in our community” but there is no appended list of what rescue groups are involved.

Page 3 of 4, last paragraph under the heading “No-kill community”: This paragraph contains a reference to “the formation of [a] single issue task force (i.e. “no-kill community” policy committee”) but fails to define any recommendation for membership of the forum’s convening committee or organizing body. Who will be included and who will be excluded, who will decide on the membership composition?

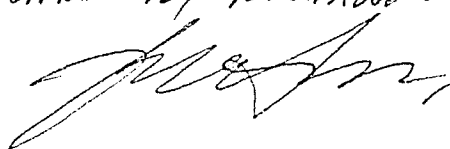
Page 4 of 4, “RAS Forum”: This section contains a recommendation for formation of a “RAS Forum” but fails to define any recommendation for membership of the forum’s convening committee or organizing body. Who will be included and who will be excluded, who will decide on the membership composition?

Page 3 of 4 and page 4 of 4: There are several references to potential costs for implementation of the recommendations contained in the “No-kill community” and RAS Forum sections yet under FISCAL IMPACT on page 4 of 4 there is the statement “No fiscal impact associated with this action” [probably should read “these actions {plural} since there are at least two actions recommended either directly or indirectly in the verbiage of the text of the report]. These statements are contradictory.

PowerPoint® slide 8: Actual numbers supporting the statistics given are not provided (appropriately should be in an attachment).

PowerPoint® slide 9: Refers to the facility assessment conducted by the American Humane Association but the actual report should have been attached to this report and copies should be available to the public (along with a copy of the NHS’s assessment report?).

RED NOTES MADE BY RICHARD SIMMONDS - AGENDA ITEM 28



1224

09-711

PowerPoint® slides 12 & 13: The verbiage in these slides advocate for a firm “no-kill” commitment – As noted in the verbiage in the third paragraph in the “No-kill community” section of this report, “There are only a few communities that have ever achieved the live release rates to be considered a ‘no-kill community’ and even fewer yet that have ever sustained it for more than a few years.” There should be no “official” Washoe County commitment to any goal titled “no-kill.” While the goal of “no-kill” is an admirable one, it is likely a very misleading term. One president of a “no-kill” shelter has been quoted as saying, “The only reason we are ‘no-kill’ is because, unlike animal shelters, we have the ability to turn people away....Just because one organization is not killing does not mean that animals are not dying en masse. The animals we unfortunately must turn away very likely end up at the end of a needle in a shelter” [Quoted by Arnold Arluke, “The No-Kill Controversy: Manifest and Latent Sources of Tension,” Chapter 5, pages 67-83 in The State of the Animals II: 2003, Humane Society of the United States, edited by D. J. Salem and A. N. Rowen]. The official goal for the County’s Animal Services Program should be to “maximize the redemption or live adoption of animals processed by Animal Services,” with the acknowledgement that unclaimed animals that are unadoptable for any reason (e.g., due to aggression, serious or terminal disease or injuries, or legal requirements such as certain species of captured wildlife) will be humanely euthanatized.

PowerPoint® slide 14: Indicates a recommendation of a “Formal Advisory Committee” with “significant fiscal impact”. Is this the single issue “task force” recommended in the last paragraph under the “No-kill community” heading? If so, see comment above, if not, this is the first mention of this committee.

## II. Agenda Item 28 – Approve Amended and Restated Lease Agreement between Washoe County and the Nevada Human Society

Third bullet under BACKGROUND and second bullet under FISCAL IMPACT refer to the pro-rata costs for use of the crematory and indicate that the NHS’ use of the crematory has been less than originally anticipated, therefore, their costs should be reduced. There have been “rumors” that the NHS has transferred ownership of “unadoptable” dogs to RAS and there is the possibility that these animals have been euthanized and their remains cremated by RAS with the county absorbing the cost. If these rumors are accurate, the “reduced” use of the crematory by the NHS may be overstated (see also comment in the fourth paragraph below).

OPEN

Sections 2.1 and 2.2 of the AMENDED AND RESTATED LEASE AGREEMENT refer to attached Exhibits 1 and 2 respectively but these documents are not attached.

PROVIDED  
O.K.

Section 2.5, subsection 3 of the AMENDED AND RESTATED LEASE AGREEMENT also refers to an Exhibit 1. There is no Exhibit 1 attached but there is an “Exhibit ‘A’” attached that appears to be related to the content of this section.

PROVIDED  
O.K.

SECTIONS TWO and THREE of the AMENDED AND RESTATED LEASE AGREEMENT together are committing the County to a total of 35 years for the lease. Is this lengthy term really in the County’s best interest?

IN ORIGINAL  
LEASE  
MS. BROWN'S  
JUSTIFICATION  
REASONABLE

Item 1. (ii) in SECTION FOUR of the of the AMENDED AND RESTATED LEASE AGREEMENT commits the County to retroactively (to July 1 2008) agree to the revised lease costs to the NHS, potentially resulting in a “refund” of the NHS’ lease payments for July 2008 through June 2009, but there does not appear to be any justification provided for this retroactivity. In addition, the proposed “formula” for calculating the NHS’ pro-rata cost for use of the crematory on page 7 is completely incomprehensible.

EXPLAINED  
SATISFACTORILY  
BY MR. SEVITT  
[Signature]

*OPEN\**

In Item A. of SECTION SIX of the of the AMENDED AND RESTATED LEASE AGREEMENT there is a reference to "NHS Services" but nowhere in the document are the services listed. Since different services may have different and potentially significant impacts on facility use, the specific services to be provided should be listed.

*PROVIDED  
O.K.*

Items A. and B. in SECTION SEVEN and Item A in SECTION EIGHT of the AMENDED AND RESTATED LEASE AGREEMENT refer to "Sections 4F, 4G, and 4H in the Lease Payment Agreement but no such document is attached to the AMENDED AND RESTATED LEASE AGREEMENT. In order to determine the specifics of which organization is responsible for which facility alterations or maintenance activities it would seem imperative to review the specific verbiage in the Lease Payment Agreement before accepting this revised lease.

*OPEN\**

Item B. in SECTION TEN of the of the AMENDED AND RESTATED LEASE AGREEMENT commits the County to paying for trash removal for the entire facility but the NHS should be responsible for disposal of any HAZMAT materials, including any medical waste generated by their activities. There are provisions referring to the NHS' responsibilities regarding contamination of the facility in SECTION SEVENTEEN but there is no provision in this later section regarding who is to pay for disposal of any HAZMAT waste generated by the normal NHS' activities.

-----END OF COMMENTS-----END OF COMMENTS-----

III. REQUEST

DUE TO THE NUMEROUS DEFICIENCIES THROUGHOUT THIS DOCUMENT, AS NOTED ABOVE, I REQUEST THAT THERE BE NO ACTION TAKEN ON THIS AGENDA ITEM AT THIS TIME AND THE AMENDED AND RESTATED LEASE AGREEMENT BE RETURNED TO STAFF FOR REVISION TO CORRECT THE DEFICIENCIES.

\* I BELIEVE MR. ST JOHN HAS REASONABLE RESPONSES TO THESE TWO POINTS - ULTIMATE DECISION IS ~~BE~~ IMMATERIAL TO ANIMAL WELFARE CONCERNS, i.e., THEY ARE ONLY POTENTIAL FINANCIAL ISSUES.

*John  
23 Jan 09*

09-711