RESOLUTION NO. 17-31

A RESOLUTION OF THE INTENT TO ENTER INTO A REAL ESTATE LEASE AND A FUNDING AND OCCUPANCY AGREEMENT AND LEASE WITH THE MIDLANDS HUMANE SOCIETY.

WHEREAS, The City of Council Bluffs owns property located at 1020 Railroad Avenue; and

WHEREAS, The Midlands Humane Society desires to cooperate with the City in the management and operation of the Animal Shelter; and

WHEREAS, A Lease Agreement and a Funding and Occupancy Agreement have been prepared and proposed to the City of Council Bluffs for the operation and maintenance of the property; and

WHEREAS, The City Council of the City of Council Bluffs has been advised and does believe that it would be in the best interests of the City of Council Bluffs to consider said proposal for the lease of the property.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That this City Council does hereby declare its intent and proposal to execute a Lease Agreement and a Funding and Occupancy Agreement with Midlands Humane Society for the lease of City owned property located at 1020 Railroad Avenue for a term of 99 years.

ADOPTED
AND
APPROVED

February 13, 2017

MATTHEW J. WALSH Mayor

Attest:

JODI QUAKENBUSH City Clerk

ATTACHMENT B

Council Communication

Department: Public Health	Resolution No. 17-31	To Set PH: 1-23-17 Public Hearing: 2-13-17

Council consideration of a resolution of intent to enter into a real estate lease and a funding and occupancy agreement and lease with the Midlands Humane Society.

Background/Discussion

- In 2010, an agreement was approved by City Council to provide for the collaboration of a local government entity and a local non-profit group to consolidate animal shelter operations at a common location to better serve the community. (An updated Exhibit F has been added.)
- The City made available to Midlands Humane Society, parts of two parcels of real property, located at 1020 Railroad Avenue, upon which a new animal shelter was built.
- Under the terms of that agreement, the City shall lease the donated property to Midlands Humane Society for a period of not less than 99 years.
- A Lease Agreement and a Funding and Occupancy Agreement has been prepared and proposed to the City of Council Bluffs for the operation and maintenance of the property.

Recommendation

Recommend approval of this resolution.

Donn Dierks, Director of Public Health

Matthew J. Walsh – Mayor

MIDLANDS HUMANE SOCIETY
ANIMAL SHELTER AGREEMENT

This Agreement between the Midlands Humane Society, a 501(c)(3) nonprofit corporation registered to do business in Iowa, hereinafter referred to as "MHS," and the City of Council Bluffs, Iowa, hereinafter referred to as the "City," is being entered this 26th day of August, 2010 (the "effective date"), for the purpose of defining the rights, duties, and obligations of the parties for the construction and operation of an animal shelter. This Agreement supercedes all previous agreements, written or oral, by any parties.

WITNESSTH:

WHEREAS, this Agreement is made to provide for the collaboration of a local government entity and a local non-profit group to consolidate their operations at a common location and enable them to better serve the community by providing animal control, animal care and adoption services, and humane educational programming using tax and charitable dollars most efficiently; and

WHEREAS, the City will make available to MHS a certain parcel of real property situated in Council Bluffs, Iowa, described and identified at Exhibit B attached hereto and incorporated herein by this reference, along with all easement rights appurtenant thereto, upon which a new animal shelter (hereinafter "the Shelter") will be built. Said real property together with all buildings, structures and other improvements now or hereafter located thereon shall hereinafter be referred to as the "Project";

WHEREAS, the Project will be used, in accordance with the provisions of this Agreement, by MHS for purposes of operating the Shelter, and from time to time, MHS will lease portions of the Project for use by the City and/or Pottawattamie County, Iowa (if applicable);

WHEREAS the City will contribute funds, in accordance with the provisions set forth herein and in an amount as calculated below, to be used by MHS for the construction and operation of the Shelter;

WHEREAS, MHS, in reliance on the promises and conditions set forth herein, has and will continue to raise funds for the construction and operation of the Shelter;

WHEREAS, this Agreement is to govern the parties' respective rights, duties, and obligations with respect to the design and construction of the Shelter (the "Design and Construction Phase") and the operation of the Shelter (the "Operations Phase");

The parties hereby agree as follows:

TERM

The Design and Construction Phase of this Agreement shall begin at such time as

sufficient capital funds have been solicited to meet the estimated construction costs of the Project. The rights, duties, and obligations of the parties as to the Design and Construction Phase shall cease upon the completion of the Project, which is identified in Exhibit D (preliminary building plan) attached hereto (the "Project"), and upon the grant of a Certificate of Occupancy.

Upon the grant of the Certificate of Occupancy, the initial term of the Operations Phase of this Agreement shall commence. The initial term of the Operations Phase shall run for a period of five years. Subsequent terms of five years shall be automatically renewed unless one of the parties gives notice to the other in writing at least six months prior to the expiration date of the term stating its intent to terminate or modify the Agreement. Termination by either party for material breach of this Agreement shall be effected as set forth herein.

During the initial term of the Agreement an annual operational review of the Agreement shall occur in every October of the term. During these reviews, possible modifications to this Agreement may be discussed between the parties at a date and location agreed upon. No modifications shall occur in the initial term of the Agreement unless both parties agree to them in writing. Any such modifications shall be reduced to writing and identified as addenda to the original Agreement.

DESIGN AND CONSTRUCTION PHASE

A. DUTIES OF THE PARTIES

THE CITY:

1. The City shall grant to MHS the sum of $1,500,000 for the construction of the Project as identified in Exhibit A. This payment shall be made to MHS in three installments. The first installment of $250,000 shall be due within 30 days of MHS giving the City written notice that it has obtained pledges for the Project that equal 90% of the funds necessary to construct the Project. The City contribution shall be included in making this determination. The second installment of $625,000 shall be due on the first anniversary of the initial payment, and the third and final installment of $625,000 shall be due upon the second anniversary of the initial payment.

2. Payments to MHS:

   a. The parties agree that the payments made by the City to MHS as described in paragraph 1, above, are critical and indispensable to the successful construction of the Project and the operation of the Shelter.

   b. Payments by the City shall be deemed in default if not paid within 30 days from the date due. The City's failure to make payments by the date they are due shall result in interest accruing on said payment at the rate of 18% per annum.

   c. Furthermore, the City shall be liable for any damages incurred by MHS as a consequence of the late payments, including, but not limited to, construction delay

costs, interest and finance charges, late fees, and any costs incurred in collecting delinquent amounts, including attorneys' fees and expenses.

3. The City shall make personnel available for consultation throughout the Design and Construction Phase of the Project, and will make reasonable efforts to assist MHS with its fundraising activities. At MHS's request, the City shall provide personnel to assist MHS in the letting of contracts for the construction of the Project and to assist in the oversight of the work being performed pursuant to said contracts.

4. The City shall lease the property described and identified in Exhibit B (*plat and legal description*) to MHS to be utilized as the site for the Shelter. The terms of this lease shall be as set forth in the document attached hereto as Exhibit C.

5. The City shall take all reasonable steps to assist MHS in applying for and obtaining approval of any permits, licenses, authorizations, waivers, or variances necessary for the construction of the Project. Where the City is the final arbiter of a permit, license, authorization, waiver, or variance, the City's approval for such matters shall not be unreasonably withheld. The City agrees to join in the execution of any instruments which may reasonably be required in order for MHS to procure the issuance of any licenses, permits, building permits or other government approvals required by MHS in its design, construction, operation or use of the Project.

MHS:

1. Separate from the payments to be made to MHS by the City as set forth herein, MHS shall be responsible for raising the additional funds necessary for the completion of the Project.

2. MHS shall be responsible for obtaining all permits required by regulatory agencies for the completion of the Project.

3. MHS shall be responsible for the letting of all contracts necessary for the completion of the Project.

4. MHS shall be deemed the sole owner of the Project subject to the rights of the City set out herein.

5. MHS shall make reasonable effort to acquire software for the Shelter that is suitable for the needs of all parties. Final selection of software shall be at the sole discretion of MHS.

6. MHS shall have sole discretion and authority over all aspects of the Design and Construction Phase of this Agreement, including, but not limited to, the hiring and firing of contractors, design, cosmetic and aesthetic issues; and any and all other issues related to construction.

OPERATIONS PHASE

THE CITY:

1. The City shall enter a lease agreement with MHS to occupy the portion of the Project identified in Exhibit D (*prelim building plan with City area highlighted*), attached hereto. The term of the lease shall be consistent with the term of this Agreement and it shall include the terms and conditions set out in Exhibit E (*standard lease agreement containing lessee/lessor obligations and rights),* attached hereto.

2. Annual Contribution by the City:

   a. The City shall make an annual contribution ("annual contribution") to MHS to assist with animal care expenses in the amount of $1.25 per capita city population. The census results published by the Metropolitan Area Planning Agency ("MAPA") immediately prior to the issuance of a Certificate of Occupancy for the Project shall be utilized in determining City population for purposes of this Agreement for each renewal period, the census published by MAPA immediately prior to the date of renewal will be used to determine the current population of the City of Council Bluffs.

   b. The amount of $1.25 per capita shall apply to the first full fiscal year the Shelter is in operation and any partial fiscal year that precedes it. The fiscal year runs from July 1 to June 30. For each subsequent fiscal year the annual contribution shall be adjusted upward by the percentage of change in the Consumer Price Index "All Urban Consumers (CPI-U) - U.S. Average - All Items" during the annual period ending on December 31 immediately preceding July 1 of the current fiscal year, as published by the Bureau of Labor Statistics of the United States Department of Labor, or any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its function.

   c. The City will finalize the calculation of the total annual contribution and will provide a written summary of the calculation to MHS at least 15 business days prior to the start of each fiscal year. The City payments for the annual contribution shall be made in monthly installments which shall be due on the 15th day of each month of the calendar year.

   d. MHS and the City agree to review the annual contribution fee structure for possible adjustment every two years, beginning 24 months after the initiation of operations of the Shelter.

   e. The parties agree that the annual contribution made to MHS as described in paragraph 2 (a) above is critical and indispensable to the successful operation of the Shelter.

   f. The City's annual contribution shall be deemed in default if not paid within 10

days from date due. The City's failure to pay the annual contribution by the date it is due shall result in interest accruing on said payment at the rate of 18% per annum.

g. Furthermore, the City shall be liable for any damages incurred by MHS as a result of the late payments, including, but not limited to, obtaining of alternate financing, interest and finance charges, late fees, and costs incurred in collecting delinquent amounts including reasonable attorney fees.

3. The City shall maintain commercial general liability insurance to insure the activities of the City and its employees at the Shelter and/or the Project in amounts of no less than those identified in Exhibit G (*insurance obligations*), attached hereto. Within 10 business days after the date of occupation of the Shelter, the City shall provide MHS with a copy of certificates of insurance evidencing this coverage on an annual basis; said certificates shall identify MHS as an additional insured.

4 . The City indemnifies MHS and holds MHS harmless from any and all liability, and any and all costs associated with such liability, arising from the activities of City employees or representatives that are carried out under the terms of this Agreement, except in such case where MHS has been determined to bear a greater percentage of fault than the City and/or its employees by the trier of fact. Such circumstances include, without limitation, the following:

a. The City is solely responsible for providing its employees and representatives with adequate health and safety training regarding the handling, transport, and treatment of animals, and the City indemnifies MHS from any and all liabilities and associated costs arising from any failure on the part of the City, its employees, or representatives to comply with statutory or regulatory procedures or requirements governing the handling, transport, and treatment of animals.

b. The City is solely responsible for supplying its employees and representatives with personal protective equipment to be used in the handling, transport, and treatment of animals, and the City indemnifies MHS from any and all liabilities and associated costs arising from any failure on the part of the City's employees or representatives to use such personal protective equipment, including any and all property damage or personal injury sustained by a City employee or representative, an employee of MHS or representative, or third-party as a consequence thereof.

c. The City is solely responsible for the conduct of its employees and representatives in carrying out the City's duties and obligations under this Agreement, and the City indemnifies MHS from any and all liabilities and associated costs arising from any negligence, including gross negligence, by a City employee or representative, including property damage or personal injury sustained by a City employee or representative, MHS employee or representative, or third-party.

d. The City is solely responsible for the hiring and firing of City employees who are carrying out the City's duties and obligations under the Agreement and for managing and monitoring the activities and conduct of its employees and representatives and ensuring that the conduct of its employees and representatives in carrying out the City's duties and

obligations under this Agreement complies with all applicable federal, state, and local laws, and the City indemnifies MHS from any and all liabilities and associated costs arising from the failure of the City, its employees or representatives to comply with applicable federal, state, and local laws including, without limitation, the Fair Labor Standards Act, the Family Medical Leave Act, the Occupational Health and Safety Act, Title VII, and state wage payment laws.

e. The City is solely responsible for maintaining workers' compensation insurance for employees who are carrying out the City's duties and obligations under the Agreement and the City agrees to indemnify MHS from any and all liabilities and associated costs arising from any personal injury sustained by a City employee in the course of carrying out the City's duties and obligations under the Agreement.

f. The City is solely responsible for any damage to City property that occurs as a result of activities carried out under the terms this Agreement. The City is responsible for any damage to MHS property that occurs as a result of City activities or the negligence, including gross negligence, of City employees.

MHS:

1. MHS shall be responsible for the day-to-day operations involving the care of animals and the maintenance of the Shelter unless otherwise specifically stated herein. The minimum standards for these activities shall be as set forth in Exhibit F (*operating portion of the business plan*).

2. MHS shall maintain insurance on the Project and the improvements thereto in amounts sufficient to replace them if destroyed. MHS shall also maintain general liability insurance covering the Project in amounts of no less than those identified in Exhibit G (*insurance obligations*), attached hereto. Within 10 business days after the date of occupation of the Shelter, MHS shall provide to City certificates of insurance evidencing this coverage on an annual basis; said certificates shall identify the City as an additional insured.

3. MHS indemnifies the City and holds the City harmless from any and all liability, and any and all costs associated with such liability, arising from the activities of MHS employees, volunteers, or representatives that are carried out under the terms of this Agreement, except in such case where the City has been determined to bear a greater percentage of fault than MHS, and/or its employees by the trier of fact. Such circumstances include, without limitation, the following:

    a. MHS is solely responsible for supplying its employees, volunteers, and representatives with personal protective equipment to be used in the handling, transport, and treatment of animals, and MHS indemnifies the City from any and all liabilities and associated costs arising from any failure on the part of MHS's employees, volunteers, or representatives to use such personal protective equipment, including any and all property damage or personal injury sustained by a MHS employee, volunteer, or representative, an employee of the City or representative, or

third-party as a consequence thereof.

b. MHS is solely responsible for the conduct of its employees, volunteers, and representatives in carrying out MHS's duties and obligations under this Agreement, and MHS indemnifies the City from any and all liabilities and associated costs arising from any negligence, including gross negligence, by a MHS employee, volunteer, or representative, including property damage or personal injury sustained by a MHS employee, volunteer, or representative, City employee or representative, or third party.

c. MHS is solely responsible for the hiring and firing of MHS employees who are carrying out MHS's duties and obligations under the Agreement and for managing and monitoring the activities and conduct of its employees, volunteers, and representatives and ensuring that the conduct of its employees, volunteers, and representatives in carrying out MHS's duties and obligations under this Agreement complies with all applicable federal, state, and local laws, and MHS indemnifies the City from any and all liabilities and associated costs arising from the failure of MHS, its employees, volunteers, or representatives to comply with applicable federal, state, and local laws including, without limitation, the Fair Labor Standards Act the Family Medical leave Act, the Occupational Health and Safety Act, Title VII, and state wage payment laws.

d. MHS is solely responsible for maintaining workers' compensation insurance for employees who are carrying out MHS's duties and obligations under the Agreement and MHS agrees to indemnify the City from any and all liabilities and associated costs arising from any personal injury sustained by an MHS employee in the course of carrying out the MHS's duties and obligations under the Agreement; MHS is solely responsible for any damage to MHS property that occurs as a result of activities carried out under the terms of the Agreement.

e. MHS is responsible for any damage to City property that occurs as a result of MHS activities or the negligence, including gross negligence, of MHS employees, volunteers, or representatives.

COOPERATION AMONG GOVERNMENT ENTITIES; BREACH

MHS will make a good faith effort to negotiate a substantially similar Agreement with Pottawattamie County, Iowa. All parties agree to cooperate, in furtherance of the goals of this Agreement, with MHS and the other government agency. Breach, by any party, of one of these agreements will not constitute a breach of the other agreement.

NOTICES

Any notices of consent or other communications given pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom it is intended, (b) on the next business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the third day following mailing by certified or registered mail, return receipt requested, postage prepaid or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefore as long as such telecopy transmission is followed by the mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

TO THE CITY:
Mayor
City Hall
209 Pearl Street
Council Bluffs, IA 51503

With a copy to:
City Attorney
City Hall
209 Pearl Street
Council Bluffs, IA 51503

TO MHS:

President of the Board
Midlands Humane Society
Council Bluffs, IA 51503

With a copy to:
Director
Midlands Humane Society
Council Bluffs, IA 51503

AMENDMENTS

Before any amendments to this Agreement shall be deemed effective, they shall be reduced to writing and approved by formal action by the governing body of each party, in the case of the City it will be the Mayor, and in the case of MHS it shall be the Board of Directors.

TERMINATION

Either party to this Agreement may terminate this Agreement upon the default of the other party. A party shall be in default hereunder if (i) such party fails to pay any sum payable herein within 30 days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements, or conditions hereof and such

failure continues for more than 90 days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the 90-day period, the defaulting party shall not be considered in default if it shall within such 90-day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

BREACH AND REMEDIES

In case of a breach or default, the nondefaulting or nonbreaching parties shall have all remedies permitted under law and equity that are available under the laws of the State of Iowa and those specific remedies as set forth herein.

RELATIONSHIP

This Agreement shall not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between the City and MHS, and it shall be construed strictly in accordance with its terms and conditions. Nothing contained herein is intended to confer a benefit upon any third parties.

INTEGRATION CLAUSE - NO ORAL MODIFICATION

This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement may not be changed, modified or rescinded, except as provided for herein. Any attempt at oral modification of this Agreement shall be void and of no effect.

ASSIGNMENT

Neither of the parties to this Agreement shall assign their interest in this Agreement without the expressed written consent of the other party. If one party becomes unable to fulfill its obligation and the other party refuses to consent in writing to the assignment of interest, then the Agreement shall be considered null and void on the date six months after the non-consenting party has provided written notice to the assigning party. In such event, both parties agree that operation of the Shelter shall continue during the final six-month term under a management structure that has been accepted in writing by both parties. Both parties agree that such agreement shall not be reasonably withheld.

COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, shall be deemed to constitute

one and the same Agreement.

SEVERABILITY

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or parts were omitted.

PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, their personal representatives, their respective successors in office and permitted assigns of the parties hereto for the entire term of this Agreement, including any renewals of the term of this Agreement.

TIME IS OF THE ESSENCE

Time is of the essence in this Agreement.

NON-WAIVER

A failure by any party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

GOVERNING LAW AND CHOICE OF FORUM

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Iowa without giving effect to the principles of conflicts of laws. Any action brought to interpret, enforce or construe any provisions of this Agreement shall be commenced and maintained in the District Court of Pottawattamie County, Iowa (or, as may be appropriate, in the United States District Court for the Southern District of Iowa if the Pottawattamie County District Court lacks or declines jurisdiction over such action.)

In witness whereof, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

CITY OF COUNCIL BLUFFS

By: _____
Mayor Thomas P. Hanafan

MIDLANDS HUMANE SOCIETY

By: Leslie A Southard
President, Board of Directors

LIST OF EXHIBITS

Exhibit A – Preliminary construction documents

Exhibit B – Plat and legal description of donated property

Exhibit C – Lease from City to MHS

Exhibit D – Preliminary building plan with City area highlighted

Exhibit E – MHS-City lease

Exhibit F - Operating Plan

Exhibit G - Insurance obligations

Exhibit B

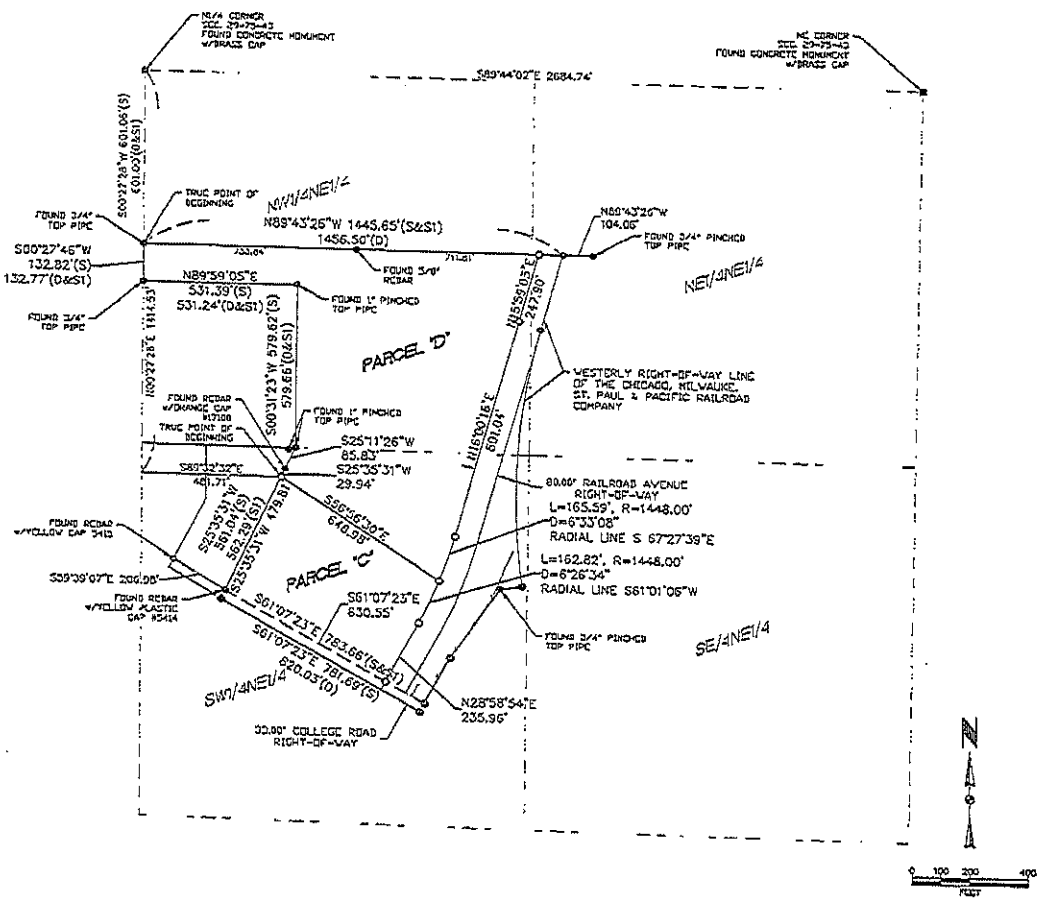
Plat and legal description of donated property

To be supplied by the City.

PLAT OF SURVEY

PART OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5th PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA.

PREPARED BY: MELVIN G. SAMPLES, P.L.S., HDM ASSOCIATES INC., P.O. BOX 919, COUNCIL BLUFFS, IOWA 51502 (712)323-0330



LEGEND

- ■ FOUND SECTION CORNER
- ● FOUND PROPERTY PIN
- ◇ SET 5/8"x18 REBAR w/YELLOW PLASTIC CAP MARKED "HDM ASSOC. PLS 10569"
- (S) SURVEY
- (D) DEED BOOK 1306, PAGE 101
- (S1) SURVEY BY HDM ASSOCIATES (DON HENDERSON) AUGUST 1974

PROPRIETOR: CITY OF COUNCIL BLUFFS

DATE OF SURVEY: DECEMBER 15, 2014

LICENSED LAND SURVEYOR
MELVIN G. SAMPLES
10569
IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

MELVIN G. SAMPLES — DECEMBER 17, 2014 DATE

LICENSE NUMBER 10569
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2015

PAGES OR SHEETS COVERED BY THIS SEAL:
SHEET 1 OF 2 AND 2 OF 2

hdm ASSOCIATES INC.
840 16TH AVENUE COUNCIL BLUFFS, IOWA
PHONE: (712) 323-0330

PLAT OF SURVEY
NORTHEAST QUARTER SECTION 29-75-43
CITY OF COUNCIL BLUFFS
209 PEARL STREET, COUNCIL BLUFFS, IOWA, 51503

project no. 150113
sheet 1 OF 2

RECORD LEGAL DESCRIPTION — RECORDED IN BOOK 1306, PAGE 101

THAT PART OF LOT 1 OF THE AUDITOR'S SUBDIVISION OF THE SOUTHWEST QUARTER NORTHEAST QUARTER (SW1/4NE1/4) OF SECTION 29, THE SOUTH 2 ACRES OF LOT 2 AUDITOR'S SUBDIVISION OF THE NORTHEAST QUARTER NORTHEAST QUARTER (NE1/4NE1/4) OF SECTION 29, AND THAT PART OF THE NORTHWEST QUARTER NORTHEAST QUARTER (NW1/4NE1/4) OF SECTION 29, EXCEPT THE NORTH 601 FEET THEREOF, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF SAID NE1/4, 601 ft SOUTH OF THE NW CORNER OF THE NE1/4 OF SAID SECTION 29; THENCE SOUTH ALONG THE WEST LINE OF SAID NW1/4 A DISTANCE OF 132.77 ft TO AN IRON PIPE; THENCE N 89°30'E-531.24 ft TO AN IRON PIPE; THENCE SOUTH 579.66 ft TO AN IRON PIPE; THENCE S25°04'W 580.90 ft TO THE CENTER OF A COUNTY ROAD; THENCE S-62°45'E ALONG THE CENTERLINE OF SAID COUNTY ROAD 820.03 ft; THENCE NORTH 27°34'E, 217.85 ft; THENCE N-34°09'E, 296.31 ft; THENCE N-80°-34'E-75.14 ft TO AN IRON PIPE ON THE WESTERLY R.O.W. LINE OF THE C.M. St. P. & P RR; THENCE NORTHERLY ALONG THE WESTERLY R.O.W. LINE OF SAID RAILROAD TO AN IRON PIPE 601.0 ft SOUTH OF THE NORTH LINE OF SAID SEC. 29; THENCE ALONG A LINE PARALLEL TO AND 601.0 ft DISTANT FROM THE NORTH LINE OF SAID SEC. 29, A DISTANCE OF 1456.5 ft TO POINT OF BEGINNING AND CONTAINING 30.63 ACRES MORE OR LESS SUBJECT TO THE R.O.W. OF EXISTING COUNTY ROAD, ALL IN TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5th P.M.

SURVEYED

SURVEYED AREA IS 29.86 ACRES, MORE OR LESS INCLUDING 0.59 ACRE MORE OR LESS OF COLLEGE ROAD RIGHT-OF-WAY.

LEGAL DESCRIPTION — PARCEL C

A PARCEL OF LAND BEING A PORTION OF LOT 1 OF THE AUDITOR'S SUBDIVISION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, OF SECTION 29, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA BEING MORE FULLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 29;

THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, SOUTH 00 DEGREES 27 MINUTES 28 SECONDS, 1,414.53 FEET;

THENCE SOUTH 89 DEGREES 32 MINUTES 32 SECONDS EAST, 481.71 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 23 DEGREES 35 MINUTES 31 SECONDS WEST, 479.81 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF COLLEGE ROAD;

THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 61 DEGREES 07 MINUTES 23 SECONDS EAST, 630.55 FEET TO A POINT ON THE WESTERLY RIGHT-OF -WAY OF RAILROAD AVENUE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 28 DEGREES 58 MINUTES 54 SECONDS EAST, 223.06 FEET, TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1,445 FEET;

THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 26 MINUTES 34 SECONDS, 162.82 FEET;

THENCE NORTH 56 DEGREES 56 MINUTES 30 SECONDS EAST, 648.98 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 6.21 ACRES, MORE OR LESS.

LEGAL DESCRIPTION — PARCEL D

A PARCEL OF LAND BEING A PORTION OF LOT 1 OF THE AUDITOR'S SUBDIVISION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, A PORTION OF THE SOUTH 2 ACRES OF LOT 2 OF THE AUDITOR'S SUBDIVISION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, AND A PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 75 NORTH, RANGE 43 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA BEING MORE FULLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 29;

THENCE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER OF THE NORTHEAST QUARTER, SOUTH 00 DEGREES 27 MINUTES 28 SECONDS WEST, 601.06 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, SOUTH 00 DEGREES 27 MINUTES 46 SECONDS WEST, 132.82 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 05 SECONDS EAST, 531.39 FEET;

THENCE SOUTH 00 DEGREES 31 MINUTES 23 SECONDS WEST, 579.62 FEET;

THENCE SOUTH 25 DEGREES 11 MINUTES 26 SECONDS WEST, 85.83 FEET;

THENCE SOUTH 25 DEGREES 35 MINUTES 31 SECONDS WEST, 29.84 FEET;

THENCE SOUTH 56 DEGREES 56 MINUTES 30 SECONDS EAST, 648.98 FEET TO A POINT ON A NON-TANGENET CURVE CONCAVE NORTHWESTERLY , TO WHICH A RADIAL LINE BEARS SOUTH 67 DEGREES 27 MINUTES 39 SECONDS EAST, 1,445 FEET, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF RAILROAD AVENUE;

THENCE NORTHEASTERLY ALONG SAID RIGHT-OF-WAY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 06 DEGREES 33 MINUTES 08 SECONDS, 165.30 FEET;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 18 DEGREES 00 MINUTES 16 SECONDS EAST, 801.04 FEET;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 15 DEGREES 59 MINUTES 05 SECONDS EAST, 247.90 FEET;

THENCE NORTH 89 DEGREES 43 MINUTES 26 SECONDS WEST, 1,445.65 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 17.77 ACRES, MORE OR LESS.

ASSOCIATES INC.
640 IOWA AVENUE COUNCIL BLUFFS, IOWA
PHONE: (712) 323-5533

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project PLAT OF SURVEY
NORTHEAST QUARTER SECTION 29-75-43
client CITY OF COUNCIL BLUFFS
209 PEARL STREET, COUNCIL BLUFFS, IOWA 51503
plat

project no. 150113
sheet 2 OF 2

Exhibit C

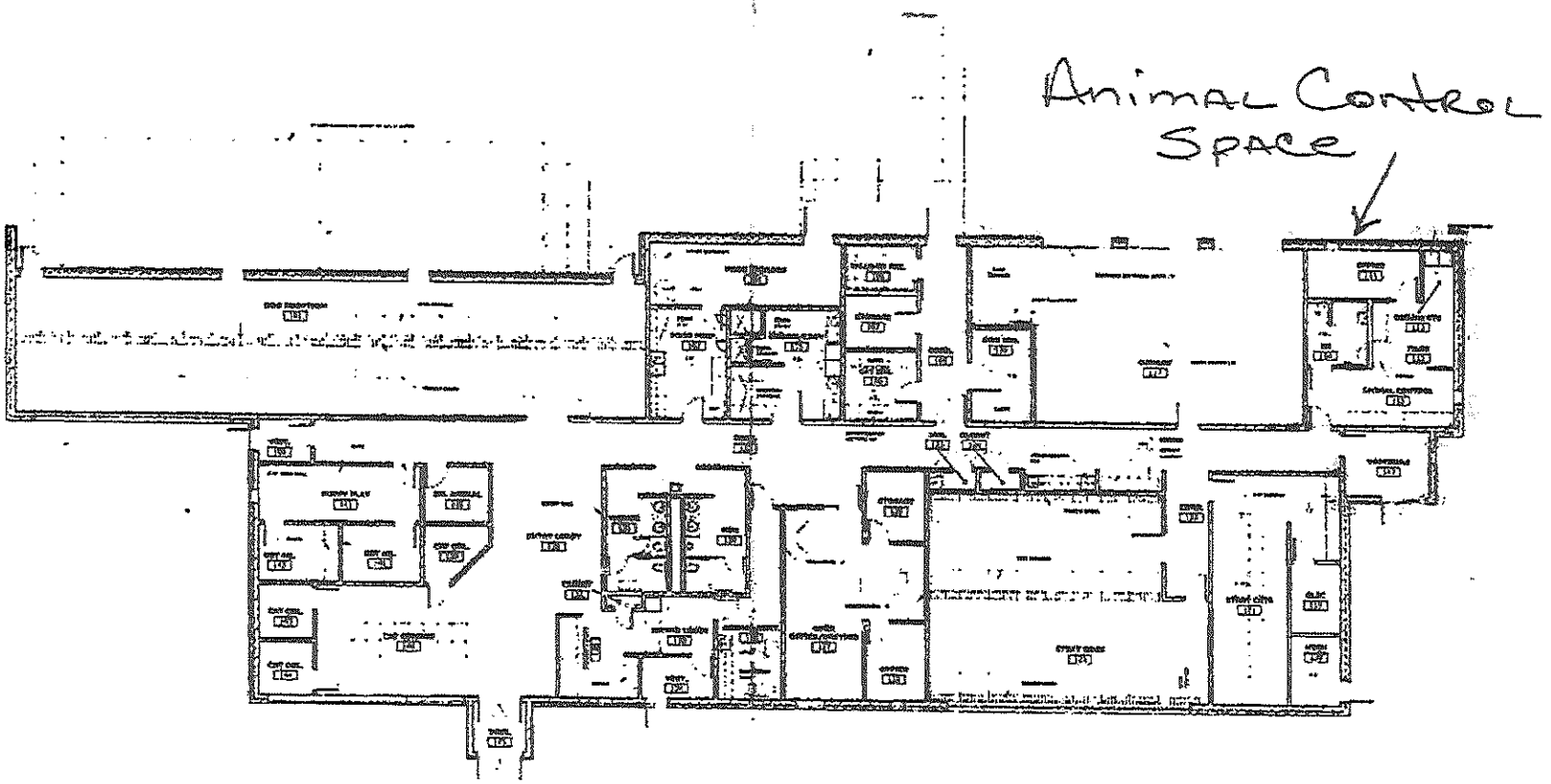
Lease from City to MHS

The City shall lease the donated property to MHS for a period of not less than 99 years. The additional terms of the City-MHS lease of the donated property will be agreed upon by the parties on or before June 1, 2010.

Exhibit D

Preliminary building plan with City area highlighted

To be supplied by MHS.



FLOOR PLAN

Exhibit E

MHS-City lease

To be supplied by MHS.

Exhibit F

Operating Plan

During a facilitated meeting process, MHS, County and the City of Council Bluffs identified its organization's core services and discussed how to work in collaboration to create a seamless process for all agency services.

The City and County identified maintaining control of the animal population and protecting citizens as the core services of their animal control officers. Currently, the City and County's staff spend approximately half of their day cleaning, maintaining and caring for animals at their respective shelters. This leaves only fifty percent of their time to address public safety concerns. Public safety issues include: responding to reports of biting, animal abuse, vicious and dangerous animals, injured or trapped animals, strays and animals creating a noise disturbance, animal code enforcement, pet licensing and proper pet vaccination.

Consensus was reached that MHS services would include the following:

- Building an animal shelter in the community that is appropriate in size, location and facilities for housing a full-service humane society and that will meet the five-year needs of the community.
- Building a facility that includes lease space for the City and County's animal control offices
- Providing quality shelter management and animal care through efficiencies gained by locating MHS and City and County animal control department under one roof
- Upgrading the image of animal control by providing traditional humane programs that include community education, animal spay-neuter services and high profile adoption strategies
- Creating an educational framework that would include all three entities where appropriate and would meet the needs of multiple audiences throughout the community. Educational strategies would include:
    - Appropriate care of companion animals
    - Obedience classes
    - Behavior modification training
    - Information regarding licensing, spay-neuter services and vaccination requirements
    - Animal safety
    - Animal abuse prevention
    - Public outreach
- Creating and implementing public awareness campaigns to successfully return animals to their owners
- Implement adoption strategies when pet return options have been exhausted that include:
    - Owner surveys to ensure successful adoptions
    - Direct links to educational offerings for new pet owners

- Developing and implementing effective public relations and marketing plans that will create interest and involvement in issues relating to the agency.
- Creating and maintaining an extensive volunteer base that would support MHS in terms of basic animal care and programmatic endeavors
- Developing revenue-generating projects and services within the scope of MHS to assist with maintaining and growing the annual operating budget
- Offering an MHS-administered telephone helpline for community residents that would assist pet owners with animal care needs
- Offering a meeting site that could be utilized to meet a number of community needs including:
    - MHS-sponsored education and training activities
    - Training space for City and County animal control officers
    - Public meeting space for area community groups
- Cremation and grieving services
- Developing an animal park adjacent to the MHS facility that meets the needs of the community and satisfies the City's obligation to create a park on the property.

MHS staff and volunteers would manage the facility's front desk and reception area. They would be responsible for managing customer relations and for all traffic flow duties including:

- Call intake. All three entities would share one published telephone number that MHS would manage
- Working with the City and County to develop collaborative forms that are customer friendly. Internal accounting protocols would allow one stop customer payments to be itemized across agencies as needed
- Greeting customers and assisting them with form completion and fee collection

MHS, the City and County are exploring one comprehensive computer software program that would allow maximum efficiency between all three entities by:

- Tracking animal intake. Each entity would have partial responsibility for record keeping and maintenance.
- Creating a mandatory process to track animals as they are transferred from the City or County to MHS's control
- Allowing access for all entities to retrieve necessary information with regards to the progression of an animal through the animal control/shelter/placement process

As MHS evolves, it may consider implementing intake policies with bordering counties who do not have a humane society presence. Any relationships with other entities will be determined by space and staff availability and will be considered additional revenue opportunities to support the core services offered by MHS.

MHS will take the lead position in working with animal rescue organizations. The City and County will maintain the lead responsibility in disaster preparedness coordination and will retain a portion of their existing kennels as part of this responsibility.

MHS plans to use a portion of its proposed site for a dog park. This will be the first such amenity for both Council Bluffs and Pottawattamie County. The dog park will be a wonderful complement to the shelter facility and a key marketing location to promote educational programming offered by MHS. MHS is also identifying the dog park as a potential revenue

source to support the agency's programming. The dog park also allows the City to meet its obligation to the donor of the property to create a park on the land.

Exhibit G

Insurance Obligations

The City will maintain the following types of insurance coverage:
1. Commercial general liability insurance covering the activities of the City and/or its employees at the Shelter and/or the Project
2. Worker's Compensation Insurance

MHS will maintain the following types of insurance coverage:
1. Commercial general liability insurance
2. Worker's Compensation Insurance
3. Insurance covering the construction activities undertaking in connection with the Design and Construction Phase
4. Property insurance covering the Project

The amounts of insurance coverage identified above will be agreed upon by the parties.

EXHIBIT F

OPERATING PLAN January 2017

The City has identified maintaining control of the animal population and protecting citizens as the core services of their animal control officers. Previously, the City's staff spent approximately half their day cleaning, maintaining and caring for animals at the shelter. This left only fifty percent of their time to address public safety concerns. Public safety issues include: responding to reports of biting, animal abuse, vicious and dangerous animals, injured or trapped animals, strays and animals creating a noise disturbance, animal code enforcement, pet licensing and proper pet vaccination.

Consensus was reached that MHS services should include the following:

* Maintain an animal shelter in the community that is appropriate in size, location and facilities for housing a full service Humane Society and that will meet the needs of the community. This will include providing quality shelter management and animal care through the efficiencies of locating in a common facility.

*Maintain a facility that includes lease space available for the city's animal control offices

*Upgrade the image of animal control by providing traditional humane programs that include community education and high-profile adoption strategies.

*Create an educational framework that will meet the needs of multiple audiences throughout the community. Educational strategies would include:

*appropriate care of companion animals
*behavior modification training for care of animals in-house
*information regarding licensing, spay–neuter services and vaccination requirements
*animal safety
*animal abuse prevention
*public outreach

*Create and implement public awareness campaigns to successfully return animals to their owners, as allowed by time and resources available.

*Implement adoption strategies when pet return options have been exhausted that include:

*owner surveys to ensure successful adoptions
*direct links to educational offerings for new pet owners

*Developing and implementing effective public relations and marketing plans that will create interest and involvement in issues relating to the agency.

*Creating and maintaining an extensive volunteer base that would support MHS in terms of basic animal care and programmatic endeavors.

*Developing revenue-generating projects and services within the scope of MHS to assist with

maintaining and growing the annual operating budget

*Cremation and euthanasia services and referrals to grieving services

*Developing and maintaining an animal park adjacent to the MHS facility that will meet the needs of the community and satisfy the City's obligation to create a park on the property. The dog park will be treated as an amenity for the City of Council Bluffs, will complement the shelter facility and be a key marketing location for MHS to provide educational programming. MHS may also use the dog park as a potential revenue generator to support its core operations.

MHS staff and volunteers will manage the facility's front desk and reception area. This will include being responsible for managing customer relations and traffic flow at the facility, including greeting customers and assisting them with form completion and fee collection.

MHS and the City shall explore and implement one comprehensive computer software program that will allow a maximum efficiency by:

*tracking animal intake, with each entity having partial responsibility for record-keeping and maintenance

*allowing access for each entity to retrieve information necessary with regard to the progression of an animal through the animal control/shelter/placement process.

As MHS grows and evolves, it may consider implementing intake policies with bordering counties who do not have a Humane Society present. Any relationships with other entities will be determined by space and staff availability and will be considered additional revenue opportunities to support the core services offered by MHS.

MHS will take the lead position in working with all animal rescue organizations. The City and MHS will coordinate and work together to take the lead responsibility in disaster preparedness coordination and the City will retain a portion of existing channels as part of the City's responsibility.