



ANNEMARIE FAGAN
Town Administrator

TOWN OF MILTON
MASSACHUSETTS

MOU

February 19, 2015

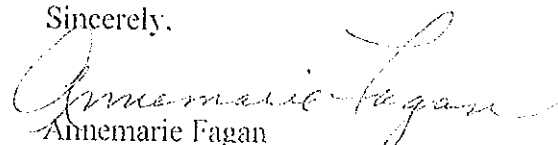
Marion V. McEttrick
10 Crown Street
Milton, MA 02186

Dear Mrs. McEttrick:

The Board of Selectmen, at its February 18, 2015 meeting, voted unanimously to approve a Memorandum of Understanding (MOU) between the Town and the Milton Animal League that will provide a framework for the anticipated written final agreement that may govern the proposed terms of funding, site selection, construction, operation and maintenance of a new animal shelter facility for the Town of Milton.

Enclosed please find an original copy of the aforementioned MOU for your files. Please contact our office if you have any questions regarding this document.

Sincerely,


Annemarie Fagan
Town Administrator

AMF/pr

enclosure

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum") made on February 8, 2015, by the Milton Animal League, Inc. (MAL), a Massachusetts corporation and 501(c)(3) organization, with a principal place of business at 181 Governor Stoughton Lane, Milton, Massachusetts 02186, and the Town of Milton, Massachusetts (the "Town"), a municipal corporation established under the laws of the Commonwealth of Massachusetts, with an address of c/o the Milton Board of Selectmen, Milton Town Office Building, 525 Canton Avenue, Milton, Massachusetts 02186, shall set forth the expressed intentions of the parties related to the project described herein.

WHEREAS the parties wish to discuss entering into one or more written final definitive agreements, some of the proposed, but not yet agreed upon essential or material terms of which are set forth below; and

WHEREAS the parties desire to enter into this Memorandum, to set forth some, but not all of the essential or material general and basic terms, conditions, services, rights, duties, and obligations that may be provided for in a written final definitive agreement or agreements for the Project described below.

NOW THEREFORE, the parties make the following statements of intent.

1. PURPOSE

The purpose of this Memorandum is to provide a framework for the anticipated written final definitive agreement(s) that may govern the proposed terms of funding, site selection, construction, operation and maintenance of a new animal shelter facility for the Town of Milton (the "Project"). It is not intended to set forth all of the essential or material terms of any agreement and is, therefore, not legally binding.

A new animal shelter (the "New Shelter") is needed because the existing animal shelter (the "existing shelter") on Governor Stoughton Lane is in disrepair. The existing shelter which was built by volunteers in October 1980 is old and is not cost effective to repair because it is structurally unsound, too small and has no air quality controls or sound suppression.

MAL wishes to facilitate and arrange for the necessary resources to build a modern, clean, quiet and attractive New Shelter to provide a place to care for stray dogs and cats until such animals are adopted.

The Town's responsibility is to ensure that stray animals do not pose a public safety threat and that dogs roaming in violation of the Town's leash law (the "Leash Law") are secured. The Town appropriates funds each year under its Leash Law and within the Police Department budget to pay the salary of its Animal Control Officer, the rental cost payable to the Governor Stoughton Trust, and operating expenses such as dog food, maintenance and utilities for the existing shelter.

For over thirty-five (35) years, MAL has provided volunteers to staff the existing shelter and raised funds to assist the Town with providing supplies and veterinary services for sheltered animals, to supplement the Town's resources. MAL intends to continue to do this in the New Shelter.

MAL will undertake to raise funds to build a New Shelter, provided that MAL and the Town agree on the location, building design and budget, construction process and method of future

operation of the New Shelter. This Memorandum will identify the concerns of MAL and the Town in each of these areas and set out parameters for future binding agreements. MAL will continue its efforts to identify foundations and other sources of funding that include animal protection as part of their mission to assist in these efforts to raise funds.

2. COOPERATION

The activities and services for the Project are anticipated to include the following responsibilities or obligations to be performed by the respective parties as identified below:

a. MAL will:

- (1) raise funds to pay for the construction of a New Shelter;
- (2) provide a mutually agreeable number of volunteers to serve on the building committee for the New Shelter;
- (3) provide any conceptual design information and cost information it has developed to the committee; and
- (4) enter into an agreement for MAL to operate the New Shelter under specified terms and conditions.

b. The Town will:

- (1) select a site for the New Shelter subject to MAL's consent;
- (2) create an animal shelter building committee which includes representatives from MAL, which building committee shall have a charge including design and construction of the New Shelter;
- (3) be responsible for all permitting and obtaining any Town Meeting approval required for the use of the New Shelter, and any other governmental permissions required;
- (4) create a gift account with appropriate controls to receive funds donated for the New Shelter's construction;
- (5) build the New Shelter using the required public construction process and with the assistance of the building committee for this purpose; and
- (6) negotiate an agreement with MAL for MAL to operate the New Shelter.

3. RESOURCES (including fund raising)

- a. It is anticipated that MAL will raise funds to pay for the design and construction of the New Shelter.
- b. Because MAL will raise funds to pay for one hundred (100%) percent of the cost of construction of the New Shelter, the Town agrees that the exclusive use of the New

Shelter will be for an animal shelter and for no other purpose. This agreement as to use will be a condition of the gift of funds to build the New Shelter.

- c. The Town will provide the land for the New Shelter. If the land chosen must be leased or purchased, it is agreed that the Town will obtain MAL's prior written consent in order for MAL to assume the burden of paying such costs through its fundraising efforts.
- d. The New Shelter will be owned by the Town and will be built by the Town. It will be the responsibility of the Town to carry out a design and procurement process that complies with the requirements for the construction of a public building, all as outlined by Town Counsel in his memorandum to the Board of Selectmen dated April 4, 2014.

Accordingly, the Town will inform MAL as to the anticipated costs of steps required for such a public construction process, in order for MAL to be fully informed as it prepares its fundraising budget.

- e. The Town will be responsible for the preparation and submission of Warrant Articles for Town Meeting that may be required to authorize the use of land, any borrowing by the Town and any other governmental permissions required to build and use the New Shelter as an animal shelter, as well as any approval from MAL as agreed upon as conditions of the gift of funds to build the New Shelter. This will require that the Town prepare a plan of the parcel of land to be used for the New Shelter. MAL will cooperate with and assist the Town with these efforts.
- f. It is anticipated that a condition of accepting funds to build the New Shelter will be an agreement between MAL and the Town about the operation of the New Shelter. Such an agreement will specify what staffing shall be provided by the Town and by MAL, and what the respective responsibilities of the Town and MAL will be to provide supplies and services such as veterinary services, who will be responsible for ongoing maintenance and long term maintenance and who will pay for utility costs. For the purpose of developing such an agreement, the Town agrees to provide to MAL all information it has on present animal control costs paid by the Town, and MAL agrees to provide to the Town a summary of its current donations of funds and labor annually to support the shelter operation. Section 6 of this Memorandum addresses the topic of an operating agreement in more detail and provides some of this information.
- g. To the extent that funds raised by the MAL are from organizations that impose their own conditions upon any gift, the Town and MAL agree that such gifts will not be accepted for the purpose of building the New Shelter unless both the Town and MAL agree that they can comply with any such conditions.
- h. It is anticipated that the parties will agree upon a budget for the Project and that the costs of the Project shall be provided for by MAL, other than the administrative costs that the Town would incur for the Town's management of any Town construction project. It is understood, for example, that if a project manager must be hired for the Project and cannot be provided by Town officials, that will be a cost of the Project for which funds will be provided by MAL.
- i. It is anticipated that the parties will agree that any funds identified herein to be contributed by one or more of the parties shall be advanced or provided by the designated

party according to a schedule and terms that will be agreed upon and included within a definitive gift agreement if and when such agreement is executed by the parties.

- j. It is anticipated that such funds may be managed by the Town but shall be used only for the purposes specified in the gift agreement.

4. **SITE SELECTION**

- a. Selection of a site for the New Shelter is the responsibility of the Town. ~~The Town will act in good faith to make a site available within four (4) months.~~ If the Town fails to make a site available, the parties may negotiate a reasonable extension of such time frame. However, the following aspects of site selection affect the ability of MAL to provide the necessary funds and require approval by MAL. For an extended period of time, MAL has engaged in fundraising for the Project. It is important to control costs and keep them within the present budget if at all possible, in order to proceed.

- (1) Whether a purchase price or lease payment will be required for the use of the site. Any such requirement will increase the scope and burden of the required fund raising.
- (2) Whether the site requires a zoning change, a Town Meeting authorization, an Act of the Legislature, or a state agency authorization. The more complicated the process for securing the site for this purpose, the greater the cost is likely to be and the longer the delay in securing the site for this use.
- (3) Whether the site is vacant land suitable to house the conceptual plans MAL has already prepared with the assistance of an architect or the land contains a structure that either must be removed or must be renovated, and what conditions might apply to such renovation. Such requirements could substantially increase the cost of the Project, either for demolition or for renovation. If renovation is required, new designs would have to be prepared at substantial cost.
- (4) Whether the site is conveniently accessible to volunteers and to the public. The shelter operation is largely dependent upon volunteers and its adoption program requires that anyone looking for an animal to adopt be able to conveniently access the New Shelter.
- (5) Whether the location is close to areas where there is open space available to walk dogs.

- b. Therefore, the parties agree that the site selected for the New Shelter will be controlled by the Town, whether through outright ownership or lease, and that the New Shelter use shall be a municipal use on that site. But because the choice of site will affect the scope of required fundraising, and MAL is raising the funds to build the New Shelter, site selection by the Town is subject to approval by MAL.

5. **PROJECT FRAMEWORK for construction**

- a. Building Committee

The Board of Selectmen shall write a charge for and appoint an animal shelter building committee (the "Building Committee"). Two (2) or another mutually agreeable number of members of MAL shall be nominated by MAL to be appointed to the Building Committee. The MAL members shall be selected by MAL as having qualifications related to the Building Committee's responsibilities, but shall also be charged specifically with communicating MAL's design concerns as they relate to the future purpose and function of the building and to cost, and with maintaining communication with MAL about issues that come up and must be resolved in the course of design and construction.

b. Building Design and Site Design

It is anticipated that the building design and site design will be the responsibility of the Building Committee and the Consolidated Facilities Director, under the direction of the Board of Selectmen, with early advice from the Town's Department Managers.

(1) The following steps will be required to create the New Shelter.

- (a) site selection
- (b) preparation of site plan
- (c) preparation of a conceptual drawing of building
- (d) preparation of conceptual cost estimates
- (e) selection of an architect (design cost estimate cost will determine process)
- (f) hiring of an architect
- (g) hiring of a project manager if required
- (h) engagement of outside engineering services if required
- (i) preparation of detailed building plans
- (j) application for a building permit with plans at appropriate level of detail
- (k) bid process for construction
- (l) review of cost and design once bids are received
- (m) periodic payments to contractors and vendors
- (n) change orders
- (o) approval of completed work and final payment

c. Approvals required from MAL

It is anticipated that certain aspects of building plans will need to be approved by MAL, such as footprint and configuration of internal space, and that MAL will prepare a list of priorities for building design in sequence according to the importance of providing certain elements in the initial construction, and possibly delaying certain elements in order to control costs.

The following general criteria will be followed in refining building design and evaluating building costs:

- (1) The footprint of the building may be built to house uses or facilities for which completion may not occur until additional funds are raised. The building will be designed so as to allow for separate heating controls for any unused or

occasionally used space. The building will be a one (1) story building and will not exceed a footprint of five thousand (5000) square feet.

- (2) The space in the building shall be allocated to the following rooms/uses: sally port (garage); multi-purpose room (emergency shelter for pets, training, indoor exercise area, indoor exercise area for dogs, community events); medical area (where veterinarians can examine animals); reception and office area; bathroom and utility rooms for cleaning supplies and food area; quarantine rooms for intake of sick animals to prevent the spread of disease; isolation rooms for sick animals; meet and greet area for potential adopters to interact with animals; and adoption area for cats and dogs.
- (3) The building will be designed so as to be sound proof and with appropriate heating and cooling systems so as to be able to care for all animals internally. This will ensure that the building will impose no noise burden on neighbors.
- (4) The building design will be attractive and will incorporate low cost maintenance features wherever possible.
- (5) The building will comply with all applicable governmental laws and regulations.

Because MAL is providing the funds to pay for construction, and will provide most of the staffing for the operation, final designs and significant changes must be approved by MAL.

d. Utility Costs and Energy Efficient Design

Because utility costs will increase with a new building, it is agreed that the building design will incorporate energy saving characteristics wherever possible. MAL and its conceptual project architect estimate that the following annual costs for heat and power may be incurred with the building as currently conceptually designed:

Energy and utility costs to run the new building are estimated to cost between \$5.00-\$7.00 per square foot, per year. The current building design is about 5,000 square feet so the annual cost to operate the building is estimated to be around \$25,000 - \$35,000 based on these assumptions. If this estimate does not include the costs of site lighting and fire alarm, sprinkler and security systems, those items, which are code requirements for a new building, could increase this estimate.

These estimates do not take into account additional savings that could be designed into the building, such as the use of solar panels on the roof, LED fixtures, super-efficient doors and windows, increased insulation and an energy efficient heating and cooling system. MAL's attorney has met with Milton's Director of Consolidated Facilities, William Ritchie, to discuss cost savings that may be possible with some of these features, and how designing in such features might alter the project cost estimates.

The Town of Milton and MAL agree that the qualifications for the project architect must include green building expertise.

Currently, the existing shelter incurs the following energy costs:

Electricity	\$4,500.00
Heat	4,900.00

The parties agree that because the Town has responsibility for utility costs for the New Shelter, that expenditure of funds on energy saving designs will be a priority. The Town agrees to seek out and apply for all possible grants to defray such costs.

6. OPERATION OF THE BUILDING AFTER AN OCCUPANCY PERMIT IS GRANTED

It is anticipated that the Town and MAL will enter into an operating agreement for operation of the New Shelter. The Town and MAL agree to the following parameters for such an operating agreement.

- a. Staffing will be provided at the same ratio as it presently is:

The Town staffs the shelter with one kennel attendant, M-F 8-11 a.m.; The Town's Animal Control Officer is on duty 37.5 hours per week, but not necessarily at the shelter and is on call 24/7.

The MAL pays for an additional kennel attendant daily, morning and afternoon; MAL volunteers staff the shelter desk 1-5 p.m., M-F, Saturdays 10-4; MAL provides one volunteer dog walker per day, and two cat caregivers per day.

Total hours, Town budget: **52.5 hours**: 15 hours (kennel attendance) = 37.5 hours (animal control officer, on call or at shelter)

Total hours paid for by MAL: **28 hours** (kennel attendants)
MAL Volunteer Hours;

Total MAL volunteer hours: 54

It should be further noted that at present the MAL must turn away volunteers. MAL does not anticipate that providing sufficient volunteers will be a problem.

- b. Hours will be agreed upon by the Town and MAL based upon resources available and the minimal requirements of the Town to be able to obtain housing for stray dogs.
- c. Veterinary services will be paid for by volunteers and by funds donated for this purpose by MAL. At present MAL provides for the cost of all veterinary services, including services to dogs the Town is required to shelter by its Leash Law.
- d. Supplies including such items as paper products, cleaning supplies, pet food, bedding, and medicine and medical supplies will be provided by MAL (in the same ratio) as they are at present.
- e. Maintenance. Both short and long term maintenance including HVAC, snow removal, and general upkeep will be provided by the Town.
- f. Insurance. As this will be a Town building it will be insured by the Town.

g. MAL will be responsible for the conduct of volunteers and will be required to insure its volunteers appropriately.

h. Utility Costs including water and sewer will be the responsibility of the Town.

7. LIMITATIONS

a. This Memorandum is not intended to be legally binding and is not intended to impose legal or equitable rights or obligations on the parties, and will have no legal or equitable effect.

b. Neither party shall be responsible for the actions of any third parties or associates who may be involved in any activities outlined in this Memorandum.

8. DURATION

a. As this is a not a legally binding Memorandum, and only the written final definitive agreement(s) will be binding on the parties, the parties are free to discontinue discussions and negotiations regarding the Project at any time, as well as to resume discussions and negotiations, and, in that event, may enter into negotiations with each other or with any other party (parties) regarding the same or similar project.

b. Each party will inform the other if it wishes to discontinue discussions and negotiations.

9. AMENDMENTS


This Memorandum may be amended only by a written document signed by the parties.


10. WAIVER

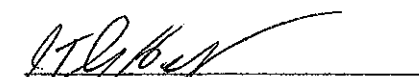
No waiver of any breach of any provision of this Memorandum shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by the waiving party.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of February 18 2014.


The Town of Milton, Massachusetts
By the Milton Board of Selectmen


Kathleen M. Conlon, Chair


Denis F. Keohane, Secretary


J. Thomas Hurley

The Milton Animal League, Inc.
By:


Alyssa Cook, President
Duly Authorized