

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

908



FROM: Community Health Agency, Department of Animal Services

SUBMITTAL DATE:
December 28, 2009

SUBJECT: APPROVE AN AGREEMENT WITH HILL'S PET NUTRITION INC., TO PROVIDE ANIMAL FEED TO THE DEPARTMENT OF ANIMAL SERVICES AT NO COST

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve an agreement with Hill's Pet Nutrition Inc., to provide animal feed and peripheral materials at no cost to the Department of Animal Services for an initial period of one (1) calendar year, and;
2. Authorize the Chairperson to execute three (3) original copies of the Agreement on behalf of the County of Riverside; and,
3. Direct the Clerk of the Board to retain one original copy and return all two (2) original copies to the Community Health Agency on behalf of the Riverside County Department of Animal Services for further processing; and,
4. Authorize the Purchasing Agent to sign future amendments as appropriate to extend the period of performance for an additional period of two (2) years for a total of three calendar years.

BACKGROUND: The Department of Animal Services wishes to enter into an agreement with Hill's Pet Nutrition Inc., in which Hill's will provide to the County animal feed to support the canine and feline animals within the shelter at no cost to the County, save for the actual cost of shipping and handling.

(Continued on Page 2)

BW:GM:lb

Betsy Webster for

Betsy Webster, Deputy Director for
Robert P. Miller Director of Animal Services

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 52,640	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 09/10

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

Debra Courmoyer
Debra Courmoyer

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Stone, seconded by Supervisor Benoit and duly carried,
IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: February 23, 2010
xc: CHA/Animal Services, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By: *Fallen*
Deputy

Prev. Agn. Ref.: | **District:** 4 | **Agenda Number:**

Purchasing: *Billy Comett*
Billy Comett, Purchasing Manager
BY: *NEAL R. KIPING*
NEAL R. KIPING
DATE: _____

Dep't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

BACKGROUND (continued):

In exchange for the feed, the County will provide sample food packs with each canine or feline adoption and display product information within the shelters.

In addition, the Department of Animal Services will, with the permission of animal adopter, provide basic information on the adopter and the adopted pet to Hill's in accordance with the Hill's agreement.

The Department of Animal Services typically budgets \$222,000 for animal feed in support of shelter operations per year. This agreement will significantly reduce this expense as most of the feed purchased by the shelters is for canine and feline shelter animals. The County will agree to a one (1) year initial period, with an additional option to extend for two years thereafter. The agreement requires that the county animal shelters display vendors' marketing materials as well as provide sample food packs to customers adopting a feline or canine. The County may exit from the agreement at anytime with 30-days written notification at no cost to the County.

In response to current economic conditions and decreasing departmental revenue, the department has been aggressively proactive in researching ways to reduce spending. The ability for organizations to offer product support at this magnitude helps support the department's desire to cut costs during this difficult economic time.

PRICE REASONABLENESS: Pricing of the product being provided is not considered in this request, as the only cost to be incurred by the County is a fixed fee of thirty-five cents per pound of feed to pay for the shipping and handling of the feed product. Other sources of this type of program have been investigated in order to provide alternatives, but it has been found that no other feed producers offer such a program. Based on the estimated volume of feed required to support the average canine and feline shelter population for a one year period, the annual estimated cost for shipping and handling of the feed is \$52,640. Shipping and handling costs are considered within the normal cost of feed during the budget process, and would be included within the typical annual budget allocation of \$222,000. Entering into this agreement could represent a potential cost savings approaching \$167,360 annually. Based on this information, the price is deemed to be fair and reasonable.

AGREEMENT

THIS AGREEMENT is made and entered into the ____ day of _____, 2009 (the "Effective Date"), by and between **HILL'S PET NUTRITION, INC.**, a Delaware corporation with its principal place of business located at 400 SW 8th Avenue, Topeka, Kansas 66603 ("Hill's"), **RIVERSIDE COUNTY DEPARTMENT OF ANIMAL SERVICES**, with its principal place of business located at 5950 Wilderness Ave., Riverside, CA 92504-1014 ("Shelter").

WHEREAS, Hill's and the Shelter desire to enter into an arrangement whereby Hill's provides its Science Diet® pet food products and pet nutrition educational services to the Shelter in exchange for the Shelter feeding Hill's® Science Diet® pet foods exclusively to the canines and felines being cared for by the Shelter and distributing a small bag of Science Diet pet food with each canine or feline adoption;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, and provisions contained herein, the parties agree as follows:

1. In-Shelter Feeding.

- (a) Hill's shall provide certain Hill's Science Diet pet food products free of charge to the Shelter for the sole purpose of feeding all canines and felines being cared for by the Shelter ("In-Shelter Feeding").
- (b) The type and quantity of Science Diet pet food provided each week by Hill's to the Shelter for In-Shelter Feeding (canned and dry), and Foster Animals (the "Complimentary Products") shall be in accordance with the Shelter's standing order (the "**Complimentary Products Standing Order**") set forth in **Appendix A** attached hereto. (See **Appendix C** for a 12-month forecast based upon Shelter's Complimentary Products Standing Order.) Hill's reserves the right to substitute the specific Science Diet pet food products that Shelter normally orders, with nutritionally equivalent Science Diet pet food products at any time.
- (c) Hill's acknowledges that unforeseen business conditions may require the Shelter to request an increase in the free food allotment. Increases need to be mutually agreed upon.
- (d) The Shelter acknowledges that the Complimentary Products are for In-Shelter Feeding only and covenants and agrees that it shall not resell or redistribute them.
- (e) Shelter agrees to pay Hill's for shipping and handling costs at the rate of thirty-five cents (\$0.35) per pound for the Complimentary Products. Such payment shall be made pursuant to Section 7 of this Agreement.

2. Shelter's Distribution of Hill's Science Diet Pet Foods to Adopters. The Shelter covenants and agrees that it shall provide to each adopter of a canine or feline from its population, one 3.5- to 5-pound bag of any Science Diet pet food product listed in **Appendix B** ("Small Trial Bags"). The Shelter shall order from Hill's, at no cost, the number of Small Trial Bags adequate to fulfill its obligation to provide a Small Trial Bag to each adopter. The number of Small Trial Bags ordered by the Shelter shall be in accordance with the Shelter's **Small Trial Bags Standing Order** set forth in **Appendix B** attached hereto. (See **Appendix C** for a 12-month forecast based upon Shelter's Small Trial Bags Standing Order.) Small Trial Bags are to be used by Shelter for adoptions only; any other use is prohibited.

3. Hill's Obligations.

Hill's will give Shelter exclusive access to Hill's Shelter Web Portal (the "Portal"). This unique Portal provides access to a library of relevant information, such as articles, links to important organizations and other shelter resources. Additionally, it allows the Shelter to manage and monitor all food and promotional material orders as well as conveniently submit adopter names and information. Log-in and password information will be provided by Hill's.

4. Shelter's Obligations. Shelter hereby covenants and agrees that, in addition to any other obligation it has under this Agreement, Shelter will abide by the following:

- (a) throughout the term of this Agreement, prominently and exclusively display Hill's pet food products in its reception/adoption area;

- (b) prominently display in its reception area and, as appropriate, on animal cages, Hill's Science Diet brand point-of-purchase materials and other collateral materials provided by Hill's, and in the event Shelter publishes a newsletter, Shelter agrees to include in such newsletter the Science Diet logo along with a statement that Shelter feeds Science Diet pet foods;
- (c) in the event that Shelter maintains a website, prominently promote and display on Shelter's website landing page the Science Diet logo with an active link to Hillspet.com, and promote that Shelter is exclusively feeding and recommending Science Diet brand pet food; website changes will be made within sixty (60) days of Agreement being signed;
- (d) work with Hill's in a good faith effort to ensure that at least fifty percent (50%) of its staff successfully completes the Hill's Pet Nutritional Counselor ("SNC") program;
- (e) provide to Hill's by the first Friday of each month, the name, address, adoption date, phone, e-mail, pet breed, pet date of birth, and pet name for all new adopters of canines and/or felines who have specifically consented to the release of this information for Hill's exclusive use in providing them with product coupons and information (the "Adopter Information"), with such Adopter Information to be provided in an electronic format acceptable to Hill's;
- (f) during the term of this Agreement, not promote, display, distribute, endorse, or feed any pet food products other than Hill's® Science Diet® and/or Hill's® Prescription Diet® brand pet foods; with the exception that Shelter may redistribute other brands of donated pet food products so long as such redistribution does not constitute direct or implied endorsement of such donated product;
- (g) maintain its current status as a 501(c)(3) not-for-profit organization or as a governmental entity, and notify Hill's immediately of the actual or threatened revocation of that status;
- (h) house all pets cared for by Shelter in a safe, caring, clean and socially-enriched environment;
- (i) not treat any animals in an abusive or inhumane manner;
- (j) educate adopters about caring for the pet and responsible pet ownership;
- (k) provide Hill's with a delivery address of either a physical shelter with a business sign and posted operating hours, a veterinary clinic, or a pet-related business;
- (l) have a veterinarian on staff or sponsoring veterinarian who provides on-going healthcare for the animals; and
- (m) provide Hill's with right of first refusal for all pet food sponsorships.

5. Term and Termination.

- (a) This Agreement shall become effective upon the date first above written and shall remain in effect for a one (1) year trial period, at which time the Agreement shall automatically renew for a period of two (2) additional years if performance criteria have been met, unless earlier terminated as provided herein. This Agreement may be terminated at any time during the initial one-year trial period or two-year renewal period:
 - (i) by either party, for any reason or no reason whatsoever, upon the delivery of thirty (30) calendar days' written notice to the other party;
 - (ii) by either party, immediately upon written notice to the other party if Hill's ceases doing business, becomes insolvent, makes a general assignment for the benefit of creditors, has a receiver appointed for its assets, or an order has been made for its "winding-up" or if the Shelter loses its status as a 501(c)(3) not-for-profit organization or governmental entity; or
 - (iii) by Hill's, if Shelter breaches its material obligations including, but not limited to, nonpayment or any other obligations under section 1, section 2, section 4(a), (e), (f), (g), (h), (i), (k), (l) or (m), or section 6, effective upon written notice of such breach to Shelter; or

(iv) by Hill's, if Shelter's account remains inactive for a minimum of three months, effective upon written notice to Shelter.

(b) Upon the expiration or termination of this Agreement, Hill's shall cease providing the pet food products under Sections 1 and 2 herein, and the Shelter shall within 30 days thereof pay any outstanding amounts owed to Hill's for shipping and handling costs described in Section 1. Additionally, the Shelter shall return to Hill's or, at Hill's discretion, make available for pick up by Hill's or its designated agents, any Hill's display rack and remaining point-of-purchase and other collateral materials which Hill's had provided to the Shelter.

6. Terms.

(a) Hill's sales company, Hill's Pet Nutrition Sales, Inc. ("Hill's Sales"), will invoice Shelter for the shipping and handling costs set forth in Section 1 above, and Shelter shall remit payments to Hill's Sales.

(b) The terms for Hill's pet food products ordered pursuant to Sections 1 and 2 of this Agreement shall be those set forth in **Appendix D** attached hereto and incorporated by reference.

(c) Nothing in this Agreement shall prohibit Shelter from purchasing Hill's Science Diet pet foods (other than those in Appendix A and B) and Hill's Prescription Diet pet foods through Hill's normal sales channels. Shelter agrees such products are not purchased for resale and that such products will not be re-sold unless Shelter is an approved Hill's retailer.

7. Confidentiality. The Shelter agrees that, to the extent permitted by law, it shall maintain in confidence and shall not disclose to any third party the terms of this Agreement without the prior written consent of Hill's.

8. Audit. Upon reasonable notice and within the Shelter's normal business hours, Hill's shall have the right to audit and inspect the Shelter's facilities, books, documents, papers and records relating to the order, use and re-distribution of Hill's pet food products and, if applicable, the use and maintenance of the Hill's display rack.

9. Indemnification. Each party (as indemnitor) agrees to indemnify and hold the other party (as indemnitee) harmless against and from any and all losses, claims, damages or liabilities, joint or several, to which the indemnitee may become subject as the result of acts or omissions, by the indemnitor in connection with the performance of the indemnitor's duties under this Agreement or as the result of its material breach of any representation, warranty, covenant or agreement pertinent to this Agreement. This indemnity provision shall survive the termination of this Agreement.

10. Assignment. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, provided, however, neither party to this Agreement shall assign its interest or obligations herein, including, but not limited to, the assignment of any monies due and payable, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

11. Waiver. No failure by either party hereto at any time to require performance by the other party of any of the conditions, terms, or provisions of this Agreement shall in any way affect such party's right thereafter to enforce the same or any other condition, term or provision of this Agreement; nor shall any waiver by either party of any breach of this Agreement, or of any term, condition, or provision hereof, be taken as or held to be a waiver of any subsequent breach, or of the right to terminate this Agreement for any subsequent breach of the same or any other condition, term, or provision of this Agreement.

12. Entire Agreement. This Agreement embodies the entire agreement of the parties in relation to the subject matter hereof and supersedes all previous agreements, arrangements and understandings, verbal or otherwise, in relation thereto. There are no representations, either oral or written, upon which either party relies as an inducement to enter into this Agreement other than those set forth herein. Except as expressly provided herein, no change in, addition to, or deletion from any portion of this Agreement shall be valid or binding upon the parties unless it is declared expressly to be a modification of this Agreement and is approved as such in writing by each party.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same Agreement.

ORIGINAL

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

HILL'S PET NUTRITION, INC.

RIVERSIDE COUNTY DEPARTMENT OF ANIMAL SERVICES

By: [Signature]

By: [Signature]

Print Name: Stefano Pettinella

Print Name: MARION ASHLEY

Title: SD Marketing Director

Title: CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

KECIA HARPER-IHEM, Clerk

By: [Signature]
DEPUTY

FORM APPROVED COUNTY COUNCIL

BY: [Signature] DATE