

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: December 7, 2016

CAO File No. 0150-10868-0000  
Council File No. 11-1345  
Council District: 7

To: The Mayor  
The City Council

From: Miguel A. Santana, City Administrative Officer



Reference: CAO Request for Proposal – To Provide Programs and Services at the Northeast Valley Animal Shelter

Subject: **NORTHEAST VALLEY ANIMAL SHELTER**

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### RECOMMENDATION

That the Council, subject to the approval of the Mayor, authorize the General Manager of the Department of Animal Services with the assistance of the Office of the City Administrative Officer and the Office of the City Attorney, to negotiate and execute a three-year management contract with three one-year renewal options between the City of Los Angeles and the Best Friends Animal Society for the operation of the Northeast Valley Animal Shelter, subject to the approval of the City Attorney as to form.

### BACKGROUND

The Northeast Valley Animal Shelter is a bond-financed facility approved by voters under the Proposition F (Fire and Animal Facilities) Bond Program in 2000. Construction of the Northeast Valley Animal Shelter (NEV), located in Mission Hills (Council District 7), was completed in 2008. Due to City budget constraints and limited resources during this time period, the NEV was not open to the public and functioned only as a limited evidence/special operations shelter from Fiscal Years 2008 through 2011.

On January 29, 2010, the Office of the City Administrative Officer (CAO) released its Three Year Plan to Fiscal Sustainability (C.F. 09-0600-8159). In this report, the CAO recommended the issuance of a Request for Information (RFI) to determine if an animal welfare organization would be willing to operate one or more of the City's Shelters. NEV was proposed for a public-private partnership in the Mayor's 2011-12 Proposed Budget and Council approved the release of the RFI. On January 10, 2011 and after multiple discussions with the Department of Animal Services (Department), the CAO released an RFI for a contractor to operate one or more Shelters. The

City received one response from Best Friends Animal Society (BFAS) to operate NEV. After reviewing its proposal in relation to available alternatives for NEV, the CAO and the Department determined that pursuing a management contract with BFAS was in the City's best interest.

Since January 11, 2012, BFAS has been providing programs and services at the NEV for nearly five years and its contract expires December 31, 2016. Under the terms of the current contract, BFAS provides the City with the following services:

- On-site adoptions and monthly adoption events (primary function);
- Low cost spay/neuter surgeries, vaccinations, and medical care for the public and shelter animals (secondary function); and,
- Educational, outreach, and development programs (tertiary function).

BFAS is obligated to take in approximately 3,000 animals annually from the Department for adoptions and to perform approximately 6,000 spay/neuter surgeries for the public and shelter animals. The following table provides a summary of adoptions and spay/neuter surgeries provided by BFAS since 2012:

		2012	2013	2014	2015	2016*	Total
Adoptions		1,818	3,349	4,148	4,463	3,382	17,160
Spay/Neuter Surgeries							
	Public	1,922	3,334	3,709	4,166	2,394	15,525
	Shelter	655	2,896	2,532	2,709	2,398	11,190
	<b>Total</b>	<b>2,577</b>	<b>6,230</b>	<b>6,241</b>	<b>6,875</b>	<b>4,792</b>	<b>26,715</b>

\*January 1, 2016 through November 30, 2016

The partnership with BFAS has enhanced the range of services provided at NEV to the benefit of all City residents at a limited cost, and reduced the number of animals euthanized due to time and space constraints. BFAS has satisfactorily provided the services described and has complied with all City current contracting requirements.

## SUMMARY

On August 25, 2016, the CAO released a Request for Proposals (RFP) for a contractor to continue operating the NEV. The RFP was posted on the Business Assistance Virtual Network (BAVN), the City's main business opportunity portal. The Proposal was accessed by 28 registered viewers of the BAVN portal. Proposals were due from potential bidders on September 26, 2016. Subsequently, BFAS was the only responder to the RFP. Based on the terms of its proposal, BFAS would continue to administer adoption and spay-neuter services, plus provide community outreach and educational programs consistent with the Department's mission. After an extensive review by the CAO, City Attorney, and the Department, the BFAS proposal was deemed responsive to the requirements and provisions of the RFP. It is now recommended that a new contract with BFAS be approved for the operation of the NEV.

Accordingly, the CAO has prepared a draft management contract (attached) for the operation of NEV by BFAS. Under the terms of the proposed contract, BFAS would provide the City with the following services:

1. Primary Function - On-site adoptions including licensing
  - Animals at the adoption center will be the legal property of BFAS
  - On average, a combined 100 dogs and cats will be housed and cared for at the NEV by BFAS
  - BFAS will receive all animals to be adopted from the Shelter from the Department, only
  - BFAS will be the adoption facilitator providing animal care, training, grooming and marketing to find the animals homes
  - BFAS will sell dog licenses to adopters and residents of the City and remit dog license fees to the City
  - BFAS will have pet supplies on-site for sale that adopters will need to transition their pet into their home
  
2. Secondary Function - Low cost spay/neuter surgeries, vaccinations, and medical care for adopted and owned pets
  - Surgical Sterilization
    - a. Cats and dogs available for adoption in the NEV
    - b. Cats and dogs owned by the public
  - Clinic Sub-Agreement (new)
    - BFAS may enter into a sub-agreement with a responsible non-profit animal welfare agency to assist in providing spay/neuter services to provide an increase in the overall level of services
  - Vouchers (new)
    - BFAS shall accept discount coupons or free certificates issued to Los Angeles residents by the Department for spay or neuter surgeries.
  - Periodic Vaccine and/or Microchip Clinics
  
3. Tertiary Function - Educational, outreach, and developmental programs and other Animal Welfare Services
  - Emergency medical treatment of animals
  - Special Events:
    - a. Adoption Events
    - b. Pet Health/Wellness Clinics
  - Free Public Education Classes
  - Dog Training Classes
  
4. Emergency Function – Temporary use of shelter for animal housing by the City

The terms of the proposed contract are essentially consistent with the current agreement and operation of the NEV. However, the proposed contract includes new provisions that allow BFAS the option to enter into a sub-agreement with a non-profit animal welfare organization to provide spay/neuter surgeries and to accept vouchers issued to Los Angeles residents by the Department for spay or neuter surgeries.

Since January 2012, BFAS has invested over \$3.5 million annually in the operation of the NEV facility. The BFAS will continue to invest in operating the NEV, whereas the City's General Services Department will continue to provide basic facility maintenance and utilities for the NEV, and will pay for all due charges up to \$200,000 annually. It would cost the City approximately \$4.0 million (\$3.5 million in salary and \$0.5 million in expenses) to operate NEV under the same conditions as BFAS. If the City continues to contract out NEV operations, it would be cost-neutral and the City would be afforded \$3.8 million in services.

Material Provisions of the Proposed Management Agreement are as follows:

Services Provided by BFAS:

- The term is three years, renewable for up to three additional years
- BFAS will only receive animals from the Department (minimum daily average of 100 animals)
- BFAS will care for, adopt, and treat animals (3,000 adoptions annually)
- BFAS will provide spay/neuter and vaccine clinics (6,000 surgeries annually)
- BFAS will receive and process animal license applications for residents of the City and remit license fees to the City at no cost to the City

Services Not Provided by BFAS:

- BFAS will not engage in any form of Trap, Neuter, Return (TNR) at NEV
- BFAS will not conduct any animal control and law enforcement activity at NEV
- Owner requested euthanasia will not be provided
- BFAS will not euthanize animals for time and space constraints
- BFAS will not provide nor accept any intake of animals brought to NEV by members of the public

Care of animals in custody of BFAS shall be in accordance with all federal, state and local humane laws and statutes. BFAS shall provide all staffing, equipment, and supplies; obtain all permits, licenses, and registrations required to operate NEV; and shall coordinate with Department staff to provide services. The Department will evaluate BFAS's performance and level of compliance with the contract by performing on-site inspections and reports. BFAS will be required to immediately correct any deficiencies identified by the Department. The proposed contract must be reviewed by the City Attorney as to form prior to execution.

The Department will request approval to enter into a new contract with BFAS from the Board of Animal Services Commission at its meeting on December 13, 2016.

## **FISCAL IMPACT STATEMENT**

Approval of the recommendation in this report will have no additional impact on the General Fund. The General Services Department is budgeted \$200,000 annually to continue to provide basic facility maintenance and utilities for the Northeast Valley Animal Shelter. The recommendation will provide cost avoidance savings during the term of the contract based on the services Best Friends Animal Society is willing to provide at no additional cost to the City. The value of services provided is approximately \$3.8 million per year.

*MAS:FGO:04170055*

Attachment

**LOS ANGELES NORTHEAST VALLEY ANIMAL SHELTER  
AGREEMENT**

Dated as of

January 1, 2017

by and between

**CITY OF LOS ANGELES**

And

**BEST FRIENDS ANIMAL SOCIETY**

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**AGREEMENT FOR USE OF THE  
LOS ANGELES NORTHEAST VALLEY ANIMAL SHELTER  
(CONTRACT NUMBER C-\_\_\_\_\_)**

**THIS AGREEMENT** (“Agreement”)) for use of the **LOS ANGELES NORTHEAST VALLEY ANIMAL SHELTER** is made and entered into as of **January 1, 2017**, between the City of Los Angeles (“City”), a municipal corporation and a charter city under the laws of the State of California, acting by and through the Department of Animal Services (“Department”) and Best Friends Animal Society, a tax-exempt non-profit animal welfare organization (“Operator”), authorized to do business in the State of California with regard to the following:

**R E C I T A L S**

**WHEREAS**, the Agreement, including the \_\_\_\_\_ options to extend, was approved by the City Council (CF # \_\_\_\_\_) and authorized the General Manager of the Department to execute the Agreement; and

**WHEREAS**, the City owns the Northeast Animal Shelter (“Shelter”); and

**WHEREAS**, following a Request for Proposals (RFP) dated August 25, 2016, Operator was selected and the City is entering into this Agreement to allow the Operator to provide certain services at the Shelter to include adoptions, pet education, spay/neuter surgeries and other Animal Welfare Services not otherwise prohibited by this Agreement; and

**WHEREAS**, it is anticipated that Operator will provide approximately 3,000 adoptions annually and related veterinary care for cats and dogs that are received from the Department’s other shelters and adopted from the Shelter, as well as 6,000 or more spay/neuter surgeries per year for pets owned by qualifying residents in the Los Angeles area or adopted from the Shelter; and

**WHEREAS**, it is anticipated that the cost to provide these services by Operator may exceed the anticipated revenue, which cost will be borne solely by Operator; and

**WHEREAS**, these operations will augment the Department's ability to provide adoption and spay/neuter services to residents in Los Angeles; and

**WHEREAS**, Operator will accept the fees for services listed herein; and

**WHEREAS**, the City has determined that the terms and provisions of this Agreement will ensure that certain Animal Welfare Services will be provided in the Shelter in a manner that benefits the public and fulfills the public purposes of the Shelter and as such public benefits and public purposes will be preserved; and

**WHEREAS**, the City desires to comply with the January 5, 2010 Permanent Injunction in *The Urban Wildlands Group, et al. v. City of Los Angeles, et al.*, Los Angeles Superior Court Action No. BS115483, as modified by the March 10, 2010 Stipulated Order Modifying Injunction

(collectively the “Injunction”), and until such time, if any, that the Injunction is lifted, Operator shall also comply with the Injunction and shall provide no services, spay/neuter surgeries, or veterinary care of any kind under this Agreement in violation of the Injunction; and

**NOW THEREFORE**, the Parties (as defined herein) covenant and agree as follows:

## **ARTICLE 1 BASIC PROVISIONS**

**Date and Parties.** This Agreement is dated, as of the date first written above, and is between City and Operator upon the provisions and conditions contained in this Agreement. The City is a municipal corporation and a charter city, organized under the laws of the State of California. The Operator is a tax-exempt non-profit animal welfare organization, with principal offices at 5001 Angel Canyon Dr., Kanab, Utah 84741.

**Reserved Powers.** The Reserved Powers of the City are expressly reserved to the City for the Term of this Agreement. Any obligations or restrictions imposed by this Agreement on the City shall not relate to or otherwise affect any activity of the City in its governmental capacity, including, but not limited to, enacting laws, inspecting Northeast Valley Animal Shelter, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the City pursuant to federal, state, or local law.

**Execution Date.** The phrase “Execution Date” shall mean the date the Office of the City Clerk of Los Angeles attests this Agreement, except in the event that Operator executes this Agreement after such attestation, in which case the date of such execution by Operator shall be the Execution Date. The Agreement commencement date shall be as of the date written above.

**Section 1.1. Term.** The term of the original Agreement shall be for **three (3) years**, and upon the mutual written agreement of the City and Operator, may be renewed for up to **three (3) additional years**. The City intends to exercise the renewal option on the condition that the Operator's performance reasonably meets the expectations stipulated in this Agreement. The City will not decline to exercise the renewal option arbitrarily and capriciously.

**References.** All references to the “City” in this Agreement shall include the City’s various departments and subdivisions, including the Department of Animals Services.

## **ARTICLE 2 DEFINITIONS AND INTERPRETATION**

**Definitions.** For the purposes of this Agreement the following terms have the following meanings:

“Affiliate”, when used to indicate a relationship with a specified Person, means a Person that, directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with such specified Person, and a Person shall be deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other

Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise (it being understood and agreed that for the purposes of this definition, a managed fund or trust shall be deemed to be an Affiliate of the Person managing such fund or trust).

“Administrative Code” means the Administrative Code of the City of Los Angeles, as amended.

“Affected Property” means any public or private property, including a park, highway, street, road, roadway, railroad, rail or other transit way, mechanical room, tunnel, storage room or elevator and any ancillary facilities related to any of the foregoing, under the jurisdiction and control of the City, any other Governmental Authority or any other Person that is located above, within the boundaries of, intersects with, crosses over or under or is adjacent to the Shelter or any part thereof.

“Agreement” has the meaning ascribed thereto in the preamble to this Agreement (including all schedules referred to herein), as amended from time to time in accordance with the terms hereof.

“Animal Welfare Services” means, in accordance with the terms of this Agreement, animal care activities identified in Section 3.2 of this Agreement.

“Annual Revenues” means, with respect to any Fiscal Year, all gross Fee Revenues and all gross Other Operator Revenues.

“Audit” and similar expressions mean, with respect to any matter or thing relating to the Northeast Valley Animal Shelter, the Northeast Valley Animal Shelter Operations or this Agreement, the performance by or on behalf of the City of such reviews, investigations, inspections and audits relating to such matter or thing as the City may reasonably determine to be necessary in the circumstances, conducted in each case in accordance with applicable United States industry accepted practices, if any, or as required by Law.

“Authorization” means any approval, certificate of approval, authorization, consent, waiver, variance, exemption, declaratory order, exception, license, filing, registration, permit, notarization or other requirement of any Person that is reasonably required from time to time for the Northeast Valley Animal Shelter Operations.

“Bank Rate” means the 3-Month London Interbank Offered Rate (LIBOR) as reported in *The Wall Street Journal* (or its successors).

“Board” means the Board of Animal Services Commissioners of the City.

“Business Day” means any day that is neither a Saturday, a Sunday nor a day observed as a holiday by State of California, the City of Los Angeles, or the United States government. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday, or Federal, California State, or City of Los Angeles holiday, such time for performance shall be extended to the next business day.

“CAO” means the City Administrative Officer of the City or the City Administrative Officer’s designee.

“Shelter” has the meaning ascribed thereto in the recitals to this Agreement.

“City” has the meaning ascribed thereto in the preamble to this Agreement.

“City Directive” means a written order or directive prepared by or on behalf of the City directing Operator, to the extent permitted hereby, to (i) add or perform work in respect of the Northeast Valley Animal Shelter in addition to that provided for in this Agreement, or (ii) change the dimensions, character, quantity, quality, description, location or position of any part of the Northeast Valley Animal Shelter or the Northeast Valley Animal Shelter Operations; *provided, however,* that no such order or directive may in any event order or direct Operator to do any act that could reasonably be expected to violate any applicable Law, the Injunction, or are materially inconsistent with Operator’s standard operating procedures dated June 2016 as provided to the City, or cause Operator to fail to be in compliance with this Agreement.

“Consent” means any approval, consent, ratification, waiver, exemption, license, permit, novation, certificate of occupancy or other authorization, of any Person, including any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any applicable Law.

“Construction Contract” means any construction contract entered into by the Operator related to the Northeast Valley Animal Shelter (or subcontracts thereunder).

“Contractor” means any person or company under contract to perform work or supply materials or labor in relation to the Northeast Valley Animal Shelter, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a contract or subcontract with the Operator.

“Days” or “days” as applied in this Agreement to a period of less than ten (10) days shall mean Business Days; otherwise, “days” shall mean calendar days unless specifically modified herein to be “business” or “working” days.

“Department” has the meaning ascribed thereto in the preamble to this Agreement.

“Designated Senior Person” means such individual who is designated as such from time to time by each Party for the purposes of Article 11.

“Emergencies” mean any event including fires, floods, earthquakes or other events that require the urgent housing of animals by the City, emergency mobilization, evacuation of household pets and large animals, and emergency staging operations. “Emergencies” shall expressly not include animal seizures resulting from hoarding or other law-enforcement situations.

“Encumbrance” means any- mortgage, lien, judgment, execution, pledge, charge, security interest, restriction, easement, servitude, option, reservation, lease, UCC filing, claim, trust, deemed trust or encumbrance of any nature whatsoever, whether arising by operation of Law, judicial process, contract, agreement or otherwise created.

“End Date” means the date on which this Agreement expires or is terminated.

“Environment” means the physical conditions which exist within the area affected by the Shelter including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance, including but not limited to soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Laws applicable to the Northeast Valley Animal Shelter regulating or imposing liability or standards of conduct concerning or relating to (i) the regulation, use or protection of human health and the Environment or (ii) the regulation, use or exposure to Hazardous Substances.

“Execution Date” has the meaning ascribed thereto in Section 1.3.

“Fiscal Year” means the annual period commencing on July 1 of a calendar year and ending on June 30 of the next calendar year.

“Governmental Authority” means any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.

“Information” means any and all information relating to the Northeast Valley Animal Shelter, including (i) income statements, balance sheets, statements of cash flow and changes in financial position, details regarding Revenues, operating income, expenses, capital expenditures and budgeted operating results relating to the Northeast Valley Animal Shelter, (ii) all certificates, correspondence, data (including test data), documents, facts, files, information, investigations, materials, notices, plans, projections, records, reports, requests, samples, schedules, statements, studies, surveys, tests, test results, information analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by the Northeast Valley Animal Shelter, the Operator or any of its Representatives in connection with the Northeast Valley Animal Shelter and (iii) proper, complete and accurate books, records, accounts and documents of the Operator relating to the Northeast Valley Animal Shelter, including any Information that is stored electronically or on computer-related media; *provided, however*, that nothing in this Agreement shall require the disclosure by any Party of Information that is protected by attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to the other Party or acquired by a Party subject to a confidentiality agreement.

“Injunction” means that certain Final Judgment and Permanent Injunction dated January 5, 2010 and as modified by the Stipulated Order Modifying Injunction in the case entitled The Urban Wildlands et al vs. City of Los Angeles et al, Case No. BS 115483 dated March 10, 2010, copies of which are attached hereto as **Attachment A**.

“Law” or “Laws” includes all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, writs, injunctions, decrees, judgments, or orders now in force or hereafter enacted, promulgated, or issued, including, without limitation, government measures regulating or enforcing public access, occupational, health, or safety standards, hazardous materials, or for parking, employers, employees, or Operators.

“Loss” means, with respect to any Person, any loss, liability, damage, penalty, charge or out-of-pocket and documented cost or expense actually suffered or incurred by such Person, but excluding any punitive, special, indirect and consequential damages and any contingent liability until such liability becomes actual.

“Month” or “Months” shall be deemed to include the actual number of days in such actual month or months.

“Municipal Code” means the Municipal Code of the City of Los Angeles, as amended.

“Notice” means the notice given in compliance with Section 13.1. and Section 13.2.

“Operations” or “Northeast Valley Animal Shelter Operations” means the provision of Animal Welfare Services by Operator in the Northeast Valley Animal Shelter, and more specifically the adoption, spay/neuter and other Animal Welfare Services to be performed by Operator at the Northeast Shelter specifically excluding animal intake or animal control or enforcement services as well as the use, maintenance and repair of the Shelter by Operator.

“Operating Agreement” means any material agreement, contract or commitment to which the Operator is a party or otherwise relating to the Northeast Animal Shelter Operations as in force from time to time (including any warranties or guaranties).

“Operating Standards” means (i) the standards, specifications, policies, procedures and processes, if any, as stated in the Operator’s standard operating procedures manual dated June 2016 that apply to the operation, maintenance, and capital improvements to, the Northeast Valley Animal Shelter set forth in the document, including any plans submitted by the Operator to the City. To the extent that any term or provision set forth in the Operator’s internal policies or procedures manual or incorporated by reference conflicts with any term or provision specified in this Agreement, then such term or provision of this Agreement shall govern and shall supersede any such conflicting term or provision.

“Operator” has the meaning ascribed thereto in the preamble to this Agreement.

“Operator Request” means a written request in respect of the Northeast Valley Animal Shelter prepared by or on behalf of the Operator and addressed to the City as provided herein.

“Neuter” means surgical castration.

“Northeast Valley Animal Shelter Council Action” has the meaning ascribed thereto in the recitals to this Agreement.

“Party” means a party to this Agreement and “Parties” means all of them.

“Representative” means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

“Required Coverage” has the meaning ascribed thereto in Section 10.1.

“Reserved Powers” means the exercise by the City of police and regulatory powers with respect to the Northeast Valley Animal Shelter, and the regulation of traffic, traffic control and the use of the public way.

“Reversion Date” means the day immediately following the End Date.

“Spay” means ovariohysterectomy.

“Standard Terms and Conditions” means those Standard City Terms and Conditions (Rev 3/09) that are attached to this contract as **Attachment B** and made a part hereof.

“Sterilization” and “surgery” means the surgical spaying or neutering of an animal.

“Tax” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, permit fees, capital stock, profits, withholding, social security, unemployment, disability, real property, possessory interest, personal property, parking, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, levy, impost, stamp tax, duty, fee, withholding or similar imposition of any kind payable, levied, collected, withheld or assessed at any time, including any interest, penalty or addition thereto, whether disputed or not.

“Term” means the term of the management contract referred to in Section 1.4.

“TNR” means Trap, Neuter and Return.

“Voucher” refers to a Discount Coupon or Free Certificate issued to a Los Angeles resident by the Department for the spaying or neutering (sterilization) of an owned dog, cat, or rabbit.

Number and Gender. In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

Headings. The division of this Agreement into articles, sections and other subdivisions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

References to this Agreement. The words “herein,” “hereby,” “hereof,” “hereto” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words “Article,” “Section,” “paragraph,” “sentence,” “clause” and “Schedule” mean and refer to the specified article, section, paragraph, sentence, clause or schedule of or to this Agreement.

Meaning of Including. In this Agreement, the words “include,” “includes” or “including” mean “include without limitation,” “includes without limitation” and “including without limitation,”

respectively, and the words following “include,” “includes” or “including” shall not be considered to set forth an exhaustive list.

**Meaning of Discretion.** In this Agreement, the word “discretion” or words of like import, City and Operator expressly agree that such Party has the sole and absolute unfettered ability to exercise such discretion, including, without limitation, to grant or withhold approval, either arbitrarily or otherwise, and with or without reason, and neither the opposite Party nor any other Person, entity, or tribunal shall have any right or power to inquire into or review the exercise of such discretion, including, without limitation, the granting or withholding of approval, or the reasons or lack of reasons therefor.

**Consents and Approvals.** Unless specified otherwise, wherever the provisions of this Agreement require or provide for or permit an approval or consent by either Party, such approval or consent, and any request therefor, must be in writing (unless waived in writing by the other Party).

**Laws.** Unless specified otherwise, references to a Law are considered to be a reference to (i) such Law as it may be amended from time to time, (ii) all regulations and rules pertaining to or promulgated pursuant to such Law, (iii) the successor to the Law resulting from recodification or similar reorganizing of Laws and (iv) all future Laws pertaining to the same or similar subject matter. Nothing in this Agreement shall fetter or otherwise interfere with the right and authority of the City to enact, administer, apply and enforce any Law in its capacity as a governmental agency.

**Currency.** Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

**Generally Accepted Accounting Principles.** All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with generally accepted accounting principles in the United States of America, consistently applied.

**Approvals, Consents and Performance by the City.**

(a) *Procedures.* Wherever the provisions of this Agreement require or provide for or permit an approval or consent by the City of or to any action, Person, Document, or other matter contemplated by this Agreement, the following provisions shall apply: (i) such request for approval or consent must (1) be directed to the proper person and contain or be accompanied by any documentation or information required for such approval or consent in reasonably sufficient detail, as reasonably determined by the City, (2) clearly set forth the matter in respect of which such approval or consent is being sought, (3) form the sole subject matter of the correspondence containing such request for approval or consent, and (4) state clearly that such approval or consent is being sought; (ii) such approval or consent shall not be unreasonably or arbitrarily withheld, conditioned or delayed (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the City); (iii) the City shall, within such time period set forth herein (or if no time period is provided, within 45 days, subject to the City’s right to extend such period for an additional 15 days) after the giving of a notice by Operator requesting an approval or consent, advise Operator by notice either that it consents or approves or that it withholds its consent or

approval, in which latter case it shall (unless such provision provides that such approval or consent may be unreasonably or arbitrarily withheld, conditioned or delayed or is subject to the discretion of the City) set forth, in reasonable detail, its reasons for withholding its consent or approval, which reasons may include the insufficiency, as determined by the City acting reasonably, of the information or documentation provided; (iv) if the responding notice mentioned in clause (iii) of this Section 2.11(a) indicates that the City does not approve or consent, the Operator may take whatever steps may be necessary to satisfy the objections of the City set out in the responding notice and, thereupon, may resubmit such request for approval or consent from time to time and the provisions of this Section 2.11 shall again apply until such time as the approval or consent of the City is finally obtained; (v) if the disapproval or withholding of consent mentioned in clause (iv) of this Section 2.11(a) is subsequently determined pursuant to Article 12 to have been improperly withheld or conditioned by the City, such approval or consent shall be deemed to have been given on the date of such final determination; and (vi) for the avoidance of doubt, any dispute as to whether or not a consent or approval has been unreasonably withheld, conditioned or delayed shall be resolved in accordance with the provisions of Article 12.

(b) *Authority of the City.* Wherever this Agreement provides that an act is to be taken or performed or approval or consent is to be given by the City, unless specified otherwise in this Agreement or otherwise expressly required by Law, the City Charter, the Municipal Code or the Administrative Code, such act may be taken or performed or approval or consent may be given by the CAO, without further action by the City Council of the City and Operator may rely thereon in all respects.

(c) *Approved Documents.* Subject to the other provisions hereof, wherever in this Agreement an approval or consent is required with respect to any document, proposal, certificate, plan, drawing, specification, contract, agreement, budget, schedule, report or other written instrument whatsoever (a "Document"), following such Approval such Document shall not be amended, supplemented, replaced, revised, modified, altered or changed in any manner whatsoever without obtaining a further Approval in accordance with the provisions of this Section 2.11.

Schedules and Exhibits. In the event of any conflict between the terms of this Agreement and the terms of the Schedules and Exhibits attached to this Agreement, the terms of this Agreement shall control.

### **ARTICLE 3 TERMS OF THE MANAGEMENT CONTRACT**

Right of Use.

(a) The City and Operator acknowledge Operator's right to use the Shelter to provide spay/neuter services, adoption services and Animal Welfare Services to the community in accordance with the terms of this Agreement and that the City may monitor to ensure compliance.

Northeast Valley Animal Shelter Operations.

(b) *Use.* Except as otherwise specifically provided herein, including without limitations the public purpose requirements of Section 3.15, Operator shall, at all times during the Term, (i) be responsible for all aspects of the Northeast Valley Animal Shelter Operations; and (ii) cause the Northeast Valley Animal Shelter Operations to be performed in accordance with the provisions of this Agreement and applicable Law (*provided, however*, that Operator may contest the application of any Law by appropriate proceedings). Operator shall, at all times during the Term, provide the programs at the Northeast Valley Animal Shelter in accordance with the Operating Standards and in compliance with any other requirement of this Agreement (including closures related to maintenance or repair activities as required by the Operating Standards) or for temporary closures required to address emergencies, public safety or temporary events.

(b) *Costs and Expenses.* Except as otherwise specifically provided herein, Operator shall, at all times during the Term, pay or cause to be paid all costs, expenses, and taxes, if any, relating to the Northeast Animal Shelter Operations as and when the same are due and payable.

(c) *Scope of Services.* Operator shall conduct the Operations at the Northeast Animal Shelter according to all federal, state, and local laws; shall comply with the terms of the Injunction; shall take no action that it knows shall cause the City to be in violation of the Injunction, shall use its best efforts to take **approximately 3,000 animals annually** from the Department of Animal Services for adoption through its Operations at the Northeast Valley Shelter; shall use its best efforts to annually provide **approximately 6,000 spay/neuter services** for adopted animals and animals owned by members of the public, and shall provide related veterinary medical services; shall provide all staffing, equipment, and supplies; shall obtain all permits, licenses, and registrations required to provide the services described herein at the Northeast Valley Animal Shelter; and shall coordinate with Department staff to provide these services:

1. Primary Function - On-site pet adoptions and periodic pet adoption events:
  - With the exception of animals being housed there by the City temporarily whether for transports or as a result of an Emergency, animals at the Northeast Valley Animal Shelter will be the legal property of Operator until they are adopted out to the public or transferred to a rescue group. Animal transfers to other rescue groups will be limited and must be approved by the Department. Animals sent for fostering must remain available and advertised for adoption and will not count toward the 100 dog and cat minimum.
  - On average a combined minimum of 100 dogs and cats available for adoption will be housed and cared for at the Northeast Animal Shelter by Operator
  - Operator will be the adoption facilitator providing animal care, training, grooming and marketing to find the animals homes.
  - Operator will receive all animals to be adopted from the Shelter from the Department of Animal Services. No other animals will be accepted by or adopted out of the Shelter. To maintain its required inventory of adoptable animals, Operator will be entitled to select from the total list of animals available to the City's New Hope Partners. Such list shall be made available to Operator on the same time it is provided to the other New Hope Partners or any other similar program in which animals are transferred from the Department's shelters to rescue groups, and no less

frequently than weekly. Operator will not provide any animal intake at the Shelter and will not accept animals brought to the Shelter by members of the public, who will be directed to one of the other shelters operated by the Department in order to turn in their animal.

- a. Consistent with Operator's adoption policy guaranteeing that adopters can return an animal at any time, Operator may accept and adopt out owner surrendered or returned animals previously adopted out by Operator at the Shelter or at adoption events that originated with the Department of Animal Services.
  - b. Operator shall not be responsible for failure to reach capacity caused by (i) insufficient numbers of healthy and otherwise adoptable animals at City shelters listed by the Department as available for transfer to the Shelter; or (ii) failure by the Department to cooperate with Operator and transfer animals in a timely manner; or (iii) other failure by the Department to cooperate with Operator.
- Operator has sole discretion to approve or reject proposed adoptions from the Shelter.
  - Operator will sell dog licenses or puppy certificates at the Northeast Valley Animal Shelter to adopters and residents living in the City of Los Angeles. Operator will collect and remit the \$20 dog license fee to the City and will be paid \$2.00 or such other amount as determined by the Board of Animal Services Commissioners and approved by the City Council, for each dog license or puppy certificate sold consistent with the guidelines established by the Department. Operator will provide the Department with the name, address and contact information of all adopters on a weekly basis, and use its best efforts to insure that adopters residing in the City are in compliance with City laws governing the number of animals that may be kept by one person or at one property by not licensing more than three dogs to any person or at one property nor adopting more than three cats to any one person or property.
  - Operator will be responsible for spaying or neutering the animals received from the Department and will only adopt out dogs and cats that have been spayed or neutered.
    - a. Notwithstanding the foregoing, on rare occasions a veterinarian may determine that an animal is permanently unfit for spay/neuter surgery due to age or other health reasons; Operator shall not be prohibited from making such animals available for adoption, but will provide the name and contact information and reason for the determination to the Department within 5 days of the adoption.
  - Operator may have animal supplies on-site for sale at the Northeast Valley Animal Shelter that adopters will need to transition their animal into their home.
2. Secondary Function - Low cost spay/neuter surgeries, vaccinations, and medical care for adopted and owned pets.
- Surgical Sterilization. All sterilizations shall include: (a) a physical examination of the animal, (b) all vaccines and anesthesia that your hospital requires during hospitalization or before surgery, (c) all after-care including suture removal, licking problems, infections, and other normal procedures.
    - a. Cats and dogs available for adoption in the Northeast Valley Animal Shelter.
    - b. Cats and dogs owned by the public.

- **Clinic Sub- Agreement.** The Department may consider allowing Operator to enter into a sub-agreement with a reputable non-profit to assist it in providing some of the spay/neuter services in the clinic in order to allow Operator to increase the overall level of services to the community and provide more funding for other lifesaving programs, including wellness programs and vaccine clinic services. Any such sub-agreement must be approved by the Department. In spite of any such Department-approved sub-agreement, Operator shall still be responsible for ensuring compliance with all aspects of this agreement. In addition, Department approval may be conditioned in part upon Operator’s additional level of service, including but not limited to providing an additional 1,000 or more spay/neuter surgeries annually for Department-owned animals and low cost surgeries for City residents, and additional services such as wellness clinics and vaccine clinics for residents of the City.
- **Vouchers.** Operator shall be allowed to accept vouchers for spay or neuter surgeries at the Northeast Valley Animal Shelter. A voucher represents a Discount Coupon or a Free Certificate issued to a Los Angeles resident by the Department for spay or neuter sterilization of an owned dog, cat, or rabbit. Voucher fees for spay/neuter surgeries are set by the Board and paid by the Department. If the Board revises said fees, the Department shall pay the Operator the revised fees effective on the date of City Council approval. Fees for vouchers (discount coupons and free certificates) used by members of the public are valued as follows:

<u>Dog</u>		<u>Cat</u>		<u>Rabbit</u>	
<i>Coupon</i>	<i>Certificate</i>	<i>Coupon</i>	<i>Certificate</i>	<i>Coupon</i>	<i>Certificate</i>
\$50	\$125	\$30	\$70	\$50	\$125

- a. Animal owners will transport their owned animal to the Operator along with a voucher and pick up the animal from Operator after service is completed.
- b. Vouchers are non-transferable, are not valid beyond the expiration date printed on them, and must be presented to Operator at the time of sterilization. Vouchers may only be used for owned cats owned dogs and owned rabbits, and are not valid for the sterilization of feral cats. Either a discount coupon or free certificate, but not both, may be used per animal per sterilization. Vouchers cannot be used for any veterinary service other than sterilization, nor in combination with any other program.
- c. Operator may charge a co-payment from an animal owner with a discount coupon. No co-payment or additional fees may be charged to an animal owner with a free certificate for sterilization including, but not limited to, uterine infection, pregnant or “in estrus” animals, animals with retained testicles, or animals weighing more than 50 pounds.
- d. Operator will accept discount coupons towards surgery and free certificates as full payment for surgery. In addition to the sterilization surgeries, Operator will provide an E-collar and pain medication as part of the discount coupon/free certificate package. Operator will administer core vaccinations (rabies and DA2PP or FVRCP) if needed at a discounted rate to the client. Ancillary services, such as flea and/or ear mite treatment, microchips, and antibiotics (prescribed on an as-needed basis) may be provided to clients at a cost, which client can accept or deny

- Authority for Expenditure (AFE) – An AFE is issued by the Department for specific service on a shelter animal. Shelter animals include pre-adoptions, pre-releases, and post-releases. These animals will be sent to the Operator to be altered 1) in preparation for adoption; 2) in preparation for pick-up after adoption; 3) after their medical condition is healthy enough for surgery. AFE reimbursements for spay/neuter surgeries are set by the Board and paid by the Department. If the Board revises said fees, the Department shall pay the Operator the revised fees effective on the date of City Council approval. Reimbursement for AFE's are valued as follows:

<u>Dog</u>	<u>Cat</u>	<u>Rabbit</u>
\$125	\$70	\$125

- a. Department staff will transport the animal, or in cases of deferred sterilization approved by Department veterinary staff, the animal owner will transport the animal, along with an Authority for Expenditure (AFE).
- b. No additional fees or co-payments may be charged for the sterilization of shelter animals, including physical examination, routine hospitalization, vaccines, and after-care services such as suture removal licking problems, infections, and other normal procedures. For owned animals that are obese, geriatric, pregnant, or exhibit uterine infections, in estrus, with retained testicles(s), or hernias, the Operator shall obtain prior authorization from the adoptive owner before treatment, as part of its standard consent form.
- c. If the Department does not authorize the additional treatment and the Operator is unable to perform the sterilization of any shelter animal, Department staff will retrieve the animal. Operator shall absorb all costs of treatment provided without prior approval from the Department.
- d. For animals that have been adopted and are being sent to Operator from the Department for surgery, but who are deemed by Operator's veterinarian to be unsuitable for sterilization that day, Operator shall contact the adopter to explain that the animal is unfit for surgery and to explain why surgery cannot be completed on that day. The Operator will ask the adopter if they would like to pick up the animal and bring it home, or if they no longer want the animal. If the adopter agrees to pick up the animal, the Operator shall inform the Department's medical staff and the shelter, who will issue a D-300 surgery deferral as described in Section 6(c) below. If the adopter advises the Operator that he or she no longer wants the animal, he or she shall be instructed to go to the shelter to process the return, and Operator shall return the animal to the shelter. The Department shall not reimburse the adopter or Operator for veterinary fees not authorized by the Department in writing.
- e. For adoption events, animals will be brought in for sterilization with an AFE by Department staff and picked up on the same day of the surgery in accordance with the arrangement made between Operator and Shelter. Operator will notify the Shelter where the animal came from if an animal is

unfit for surgery and the Department will retrieve the animal from the Operator.

- Periodic Vaccine and/or Microchip Clinics.
3. Tertiary Function - Educational, outreach, and development programs and other Animal Welfare Services as may be offered at the discretion of Operator
    - Emergency medical treatment of animals;
    - Special Events:
      - a. Pet Adoption Events.
      - b. Pet Health/Wellness Clinics.
    - Free Public Education Classes.
    - Dog Training Classes for dogs waiting to be adopted from the Shelter, for fostered dogs and for dogs with valid licenses belonging to the community.
  4. Emergency Function – Temporary use for animal housing by City

(d) *Operational Requirements.* Operator shall maintain at all times an approved written protocol detailing all procedures, including, but not limited to animal handling, vaccination, anesthesia surgery guidelines, and drug inventory. This protocol must be available for review and approval by the Department at the inception of this Agreement and at all times during its term. The Operator shall post this protocol in a public area at all times.

(e) *Days and Hours of Operation.* Operator shall ensure that the adoption center and spay/neuter clinic are each open to the public and available to **provide services a minimum of 30 hours per week**. All hours and days of operation shall be subject to mutual agreement between Operator and Department and shall be posted in a manner clearly visible to the public. Operator may not change hours and days of operation without prior written approval from the Department; such changes must be announced to the public no less than seven (7) calendar days before they become effective. Operator must notify Department of planned closures no less than 14 calendar days before the closure, and must post notice of said closure for public view. In the event that Operator's veterinarian will be absent, Operator may retain the temporary services of a licensed veterinarian to perform necessary surgeries in the absence of Operator's veterinarian, subject to Department disapproval. The Department reserves the right to have its own veterinary staff or other veterinarian perform said surgeries if Operator's veterinarian is absent, and in such cases, Operator shall reimburse the Department for these services.

(f) *Equipment and Supplies.* Operator shall obtain, at its own expense, all equipment and supplies to be used in the operation of the Northeast Valley Animal Shelter, including all food, medical supplies, medicines, cleaning agents, microchips, tools, anesthesia machines, autoclaves, and any other necessary tools, instruments, supplies, and equipment. Operator shall maintain in good working order, at its own expense, all equipment used in the operation of the Northeast Valley Animal Shelter, and shall ensure that repairs or replacement of equipment does not unreasonably interrupt its services.

(g) *Equipment Purchase Option.* At the end of the term of this Agreement, and upon mutual agreement, Department may purchase from Operator, at a mutually-agreed depreciated price consistent with equipment of comparable age and use, Operator's equipment used in the operation of the Northeast Valley Animal Shelter. However, the Department shall be under no obligation to make such purchases.

(h) *Cost of Supplies, Services and Personnel.* The cost of setting up, staffing, maintaining and performing services under this Agreement shall be the sole responsibility of Operator. Notwithstanding the foregoing, City shall reimburse Operator for additional staff, labor, veterinary and other expenses, including but not necessarily limited to overtime wages, incurred by Operator in the event (a) the average number of animals being housed for transfer pursuant to subparagraph (i) below exceed seventy (70) animals in any 2-week period; or (b) if, as a result of Emergencies, Operator is required to house more than one hundred (100) animals for more than a forty-eight (48) hour period. Operator shall attempt to minimize any additional expenses through the use of volunteers; however, within 30 days of the end of such Emergency, City shall reimburse Operator for such additional expenses. Alternatively, City may use its own staff, under the direction of Operator, to provide additional resources to mitigate or avoid reimbursing Operator in the event of the above occurrences. In the event of such Emergency situation, Operator and City shall use their best efforts to cooperatively manage the facility and expenses.

(i) *Use by City.* The City may use some of the Shelter space at no cost to the City when City requests such space to temporarily house overflow animals in the event of Emergencies requiring temporary holding spaces for large animals or a large number of animals. In addition, City will be able to house animals that are being transferred to other municipalities or organizations outside of Los Angeles County. Operator shall cooperate with the City to make excess kennel and such other spaces available. Such use by the City will count toward the 100 minimum animals that Operator is required to have at any time. Operator shall house more than one animal per cage space when such housing is feasible and safe and maintain the Shelter in a manner that provides adequate space for such City use.

(1) With respect to animals being housed for transport to other municipalities or organizations, the City shall be solely responsible for (a) organizing such transports; (b) medical, veterinary, and other costs and certificates associated with transporting the animals; and (c) staffing the transports. Operator, may, at its sole discretion elect to assist organizationally, logistically, or medically with such transports, but shall have no contractual obligation beyond housing, feeding, and general care-taking of the animals at the shelter. Operator shall not be required to house animals that are medically or behaviorally unsuitable for transport and shall promptly notify the City of such animals.

(2) City acknowledges that Operator is equipped and staffed to care only for dogs, cats, and rabbits. In the event of an Emergency requiring other species of animals to be housed and cared for at the Shelter, City shall provide staff capable of caring for such animals.

(3) Operator shall not be required to move, relocate or find other accommodations for animals already housed at the Shelter to make room for additional animals pursuant to this

paragraph if such move, relocation or other accommodations would result in animal neglect or require relocation to another facility.

(4) Operator shall have the discretion to provide veterinary services to all animals housed at the Shelter, regardless of whether ownership is with Operator or City.

(5) City shall use commercially reasonable and good faith efforts to provide at least 72 hours advance notice to Operator of any circumstances that may require Operator to house overflow animals pursuant to this paragraph.

(6) Operator shall permit Animal Control Officers the use of some space in the Shelter for administrative functions during normal business hours, such as to receive and make service calls when working in the general area, specifically excluding animal intake functions. Operator shall have no obligation to provide computers, telephone equipment or administrative support for use by the City's Animal Control Officers.

(j) *Sustainability Plan.* In support of the City's pLAN for sustainability, the Operator shall ensure that hoses and cleaning supplies are well-maintained to avoid wasting water and employees are trained to use good water management practices such as not allowing faucets or hoses to run excessively. Likewise, in the interest of water conservation, the contractor shall continue to support water wise landscaping and xeriscaping. To assist in the reduction of greenhouse gas emissions and improving air quality, the Operator shall encourage employees to carpool, use mass transit, bicycle, or take other steps to reduce the amount of traffic on roadways. Finally, the Operator will assist in the reduction of paper waste by encouraging employees to consider whether an item really needs to be printed and affixing default settings on printers to double-sided printing. The Operator will continue efforts toward paperless transactions including employee enrollment and on-boarding and volunteer enrollment.

#### Maintenance and Repair.

(a) *Maintenance and Security.* The Department of General Services ("GSD") shall maintain in good order, condition, and repair the Northeast Valley Animal Shelter and every part thereof, including, but not limited to: windows and plate glass windows; interior and exterior walls; floors and ceilings; interior and exterior doors; fixtures; electrical facilities and equipment; plumbing fixtures and plumbing; and restrooms. GSD agrees to maintain and repair, at GSD's sole cost and expense, all of the GSD improvements at the Northeast Valley Animal Shelter, except for damage caused by the negligence or willful misconduct of Operator, at which time GSD shall bill Operator for the work performed, and Operator shall pay such bill within thirty (30) days of receipt of the bill. The Operator may not change the locks without the prior written consent of GSD, which consent shall be in the GSD's sole and absolute discretion, and which consent shall require that GSD and the Department be provided with a complete set of all new keys. Operator shall promptly notify GSD of any maintenance issues or needed repairs including but not limited to plumbing and electrical issues.

(b) *Janitorial.* Operator shall be responsible for providing and paying for its own janitorial/cleaning/housekeeping services and trash collection. Operator shall keep clean the Northeast Valley Animal Shelter and every part thereof, including, but not limited to, windows,

interior walls, floors and ceilings, doors, fixtures, appliances, plate glass windows and restrooms. The Operator shall promptly remove all non-hazardous trash and waste generated from its operations.

(c) *No Repair Obligation by the Department of General Services.* Notwithstanding the Department of General Services' obligation to maintain the Northeast Valley Animal Shelter in good working order as stipulated in Section 3.3, the Department of General Services shall have no further obligation to repair, remodel, replace, and/or reconstruct any improvement at the Northeast Valley Animal Shelter. In the event the Shelter becomes unusable for the purposes provided herein, the Department of General Services, the Department and Operator agree they shall meet and discuss necessary repairs or remodeling to restore the Northeast Valley Animal Shelter to a usable condition. If no agreement can be reached however, Operator's sole remedies shall be to either correct the deficiencies at its own expense or to terminate this Agreement upon thirty (30) days prior written notice and provide a copy to the Department, and Operator waives any other remedy, whether in damages or in specific performance.

(d) *Rights Reserved By the Department of General Services.* Without limiting any rights the City may otherwise have under this Agreement, the Department of General Services specifically reserves the right from time to time, subject to its use of reasonable efforts to minimize interference with Operator's use and occupancy of the Northeast Valley Animal Shelter and without compensation to Operator for inconvenience or otherwise:

(i) To install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires, fixtures and appurtenant meters and equipment for service to the Northeast Valley Animal Shelter and/or other parts of the building, in which case the City shall have responsibility for the disturbance, if any, of asbestos resulting therefrom; and

(ii) To make changes to the Northeast Valley Animal Shelter's design and layout, including without limitation, changes in the location, size, shape and number of entrances, loading and unloading areas, ingress, egress, direction of traffic, walkways, and parking areas.

No Encumbrances. The Operator shall not do any act or thing that will create any Encumbrance against the Northeast Valley Animal Shelter and shall promptly remove any Encumbrance against the Northeast Valley Animal Shelter, unless the Encumbrance came into existence as a result of an act of or omission by the City or a Person claiming through it which in turn was not caused by an act or omission of the Operator. The Operator shall not be deemed to be in default hereunder if the Operator continuously, diligently and in good faith contests any such Encumbrance, or the validity thereof (or causes such contest), by appropriate legal proceedings that shall operate to prevent the foreclosure of any such Encumbrance, *provided* that the Operator has given (i) advance notification to the City that it is the intent of the Operator to contest the validity or collection thereof or cause such contest and (ii) unless a bond or other security is provided in connection with such proceedings, a satisfactory indemnity to the City or deposit with the City a letter of credit, title insurance endorsement (or similar instrument), indemnity bond, surety bond, cash or eligible investment reasonably satisfactory to the City in an amount equal to the amount of the claim or Encumbrance, plus such interest and penalties, court costs, or other charges as the City may reasonably estimate to be payable by the Operator at the

conclusion of such contest or as is required to provide insurance over any potential Encumbrance; *provided, however*, that in the event such Letter of Credit, cash or Eligible Investment shall be so deposited, the same shall be held until such claim or other imposition shall have been released and discharged and shall thereupon be returned to Operator, less any amounts reasonably expended by the City to procure such release or discharge, or any loss, cost, damage, reasonable attorneys' fees or expense incurred by the City by virtue of the contest of such Encumbrance.

### **Rights of the City to Access and Perform Work on the Northeast Valley Animal Shelter**

(c) *Reservation of Rights.* The City reserves (for itself and any of its Representatives) and shall, at all times during the Term, have the right to enter the Northeast Valley Animal Shelter and each and every part thereof at all reasonable times and upon reasonable prior notice to perform each of the following at the City's own cost and expense (other than if pursuant to clause (ii) or (iii)):

(i) to inspect the Northeast Valley Animal Shelter or determine whether or not the Operator is in compliance with its obligations under this Agreement or applicable Law;

(ii) if a Operator Default then exists, to make any necessary repairs to the Northeast Valley Animal Shelter and perform any work therein pursuant to Section 12.1(b)(iii);

(iii) in the event of an emergency or danger that threatens to cause injury to individuals (or damage to property) or to impair the continuous operation of the Northeast Valley Animal Shelter and if Operator is not then taking all necessary steps to rectify or deal with said emergency or danger, to take actions as may be reasonably necessary to rectify such emergency or danger (in which case, no notice shall be necessary);

(iv) as may be necessary to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property owned or controlled by the City that is located within or adjacent to the Shelter, including, without limitation, congestion, management equipment and signage, utilities and storage and maintenance facilities located within portions of the Affected Property that are located within the Shelter;

(v) to design, construct, operate, service, manage, maintain, repair, rehabilitate or replace any Affected Property;

(vi) to (A) install, design, manage, maintain, repair and rehabilitate any existing or future utilities or similar services (whether provided by the City or third parties at the City's instruction) in, on, under, across, over or through the Northeast Valley Animal Shelter (including water and sewer lines, power transmission lines, fiber optic cable, other communications and other equipment), (B) grant easements and rights on, over, under or within the Northeast Valley Animal Shelter for the benefit of suppliers or owners of any such utilities or services and (C) use the Northeast Valley Animal Shelter in connection with any such installation, design, management, maintenance, repair or rehabilitation (*provided* that notwithstanding the foregoing clauses (A), (B) and (C), the Operator shall have the right, at all times during the Term, to install, design, manage, maintain, repair and rehabilitate utilities or other services for its own account

(and not for lease, resale or service to third parties) to the extent that the said utilities or services are necessary for the Northeast Valley Animal Shelter Operations); and

(vii) to, solely in accordance with the terms hereof, do any other act or thing that the City may be obligated to do or have a right to do under this Agreement.; *provided, however,* that the City shall not be obligated to make any payments to Operator for such access and the City shall use reasonable efforts to minimize interference with the Northeast Valley Animal Shelter Operations in connection with any entry on the Northeast Valley Animal Shelter pursuant to this Section 3.5(a).

(d) *Effect of Reservation.* Any reservation of a right by the City and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City to enter the Northeast Valley Animal Shelter and to make or perform any repairs, alterations, restoration or other work in, to, above, or about the Northeast Valley Animal Shelter which is Operator's obligation pursuant to this Agreement, shall not be deemed to (i) impose any obligation on the City to do so, (ii) render the City liable to Operator or any other Person for the failure to do so or (iii) relieve Operator from any obligation to indemnify the City as otherwise provided in this Agreement. Nothing in this Agreement shall impose any duty upon the part of the City to do any work required to be performed by Operator hereunder and performance of any such work by the City and any of their Representatives, grantees, tenants, mortgagees, licensees and others claiming by, through or under the City shall not constitute a waiver of Operator's default in failing to perform the same.

Section 3.6. *Payment of Taxes.* Operator shall pay when due all Taxes payable during the Term in respect of the operations at or conduct of business in or from the Northeast Valley Animal Shelter, including any Taxes imposed on customers of the Northeast Valley Animal Shelter as required by the applicable Law. Operator shall have no obligation whatsoever to pay property taxes assessed against the property; City shall have sole responsibility for paying any and all property taxes.

Section 3.7. *Los Angeles City Business Tax.* Operator represents that it will obtain and will hold from the time of Closing through the End Date, the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the Term of this Agreement, Operator shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

Section 3.8. *Utilities.* Operator shall pay when due all charges (including all applicable Taxes and fees) for telephone and other utilities and services used in the Northeast Valley Animal Shelter Operations or supplied to the Northeast Valley Animal Shelter during the Term. Upon request of the City, Operator shall forward to the City, within 15 days following the respective due dates, official receipts, photocopies thereof, or other evidence satisfactory to the City, acting reasonably, of the payment required to be made by Operator in accordance with this Section 3.8. The City does not warrant that any utility services will be free from interruptions caused by war, insurrection, civil commotion, riots, acts of God, government action, terrorism, repairs, renewals, improvements, alterations, strikes, lockouts, picketing, whether legal or illegal, accidents, inability to obtain fuel or supplies or any other causes, and any such interruption of

utility services in and of itself shall never be deemed a disturbance of Operator's use of the Northeast Valley Animal Shelter, or render the City liable to Operator for damages or relieve Operator from performance of Operator's obligations under this Agreement. City shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, and water supplied to the Northeast Valley Animal Shelter during the Term, which amount when combined with the costs of having GSD maintain the Shelter in good order, condition, and repair as provided in Section 3.3 above, shall not to exceed \$200,000 annually. This amount may be adjusted annually in the GSD budget by the City Council to reflect increases in the cost of material or gas, electricity, and water. Any costs in excess of the annual maximum shall be the responsibility of Operator, and Operator shall forward to the City, within 30 days following the receipt of a bill, the amount due, if any.

Section 3.9. Notices of Defaults and Claims. Operator shall promptly give notice to the City (i) if Operator becomes aware that a Default has occurred under this Agreement (*provided, however*, that the failure to give such notice shall not constitute an independent Default) and (ii) of all material claims, proceedings, disputes (including labor disputes) or litigation in respect of the Operator pertaining to the Northeast Valley Animal Shelter or the City or the Northeast Valley Animal Shelter Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which Operator is aware (other than as a result of a notice to Operator from the City). Operator shall provide the City with all reasonable information requested by it from time to time concerning the status of such claims, proceedings or litigation.

Section 3.10. Name and Advertisements.

(a) *Names.* Operator shall not have the right to sell, lease, or license any naming rights for the Northeast Valley Animal Shelter, but may use its own name, logos and trademarks in conjunction with the operation and advertisement of the Shelter so as to clearly indicate that Best Friends Animal Society is operating an adoption and spay/neuter program from the facility. Upon approval of the City as to content, Operator may secure such an on-site sign or banner on the outside of the Shelter identifying that Operator is operating a pet adoption and spay/neuter facility at the Shelter, **such as the "Best Friends Animal Society Pet Adoptions and Spay Neuter Services"** as attached hereto as **Attachment D** upon obtaining prior approval (and any required permits) from the City's Department of Building & Safety for the sign or banner. The Shelter will retain the name "Northeast Valley Animal Shelter" whose signage will remain visible at all times, and the City reserves the right at its sole discretion to change its own names, logos, or marks for the Northeast Valley Animal Shelter. Any uses of the City's names, logos, or marks shall be subject to City approval of the location and manner of use and subject to a separate License Agreement.

(b) *Advertisements.* Operator shall have the right to advertise its services in and about the Shelter *provided* that all advertisements shall comply with (i) the advertising and signage policy, rules and regulations of the City and the Department regarding interior or exterior signage and (ii) shall comply with all City codes and requirements and directives concerning outside signage, including obtaining all required permits from the Department of Building & Safety. Any advertisement in violation of the Los Angeles Municipal Code, City directives or the Injunction is expressly prohibited.

(c) *Signage.* Upon written approval of the City, Operator shall have the right to use its own name, logos, and trademarks in conjunction with signage placed on, in and around the Northeast Valley Animal Shelter. The size and location of such signage shall comply with the signage policy, rules and regulations of the City, and may not cover or otherwise obscure existing Shelter signage. Any signage in violation of the Los Angeles Municipal Code, City directives or the Injunction is expressly prohibited. All signs and sign permits will be for on-site signs only, and will not be transferable to other locations. Upon the termination or expiration of the Agreement, Operator shall remove the sign or banner and shall have no further rights to the signage or pursuant to the sign permit.

Section 3.11. *Police, Fire, Emergency and Public Safety Access Rights.* At all times during the Term and without notice to Operator (i) any police, fire and emergency services and any other security or emergency personnel retained by or on behalf of the City shall have access, as required by such services or personnel, to the Northeast Valley Animal Shelter; (ii) the City shall have access, as required by the City, to the Northeast Valley Animal Shelter as necessary for the protection of public safety; *provided, however,* that inspections by the City for purposes of determining whether or not Operator is in compliance with its obligations under this Agreement or applicable Law shall be undertaken pursuant to Section 3.4(a)(i); and (iii) any Governmental Authority with jurisdiction over the Northeast Valley Animal Shelter shall have access to the Northeast Valley Animal Shelter as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency.

*Payments by the City.* Operator acknowledges and agrees that if the City is required under applicable Law of general application (except with respect to Laws imposed by the City itself) to withhold a portion of any payment that the City is obligated to make to Operator under this Agreement, the City will be deemed to have satisfied such payment obligation to Operator to the extent of such withholding by the City.

*Operating Standards – Operator Changes.* If Operator, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards adopted in this Agreement, Operator must provide notice of such proposed operating standards to the City for Approval. Operator's proposed operating standards must be accompanied by an explanation of Operator's rationale for making its proposal and all relevant supporting information, certificates, reports, studies, investigations and other materials as are necessary to demonstrate that Operator's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. The City may request any additional supporting information, certificates, reports, studies, investigations and other materials as are reasonably required by the City to determine if the Operator's proposed operating standards are reasonably designed to achieve the objectives of the applicable Operating Standards. Approval of the Operator's proposed operating standards may be withheld, delayed or conditioned only if the City reasonably determines that Operator's proposed operating standards are not reasonably designed to achieve the objectives of the applicable Operating Standards. Until the City provides its Approval for the implementation of Operator's proposed operating standards, Operator shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. Operator's proposed operating standards shall be deemed incorporated into the Operating Standards upon written Approval by the City in accordance with the terms hereof.

Operating Standards – City Changes. The City shall have the right, at any time during the Term, to modify or change the Operating Standards upon notice to Operator to comply with any new City Law applicable to the Northeast Valley Animal Shelter Operations. In the event the City modifies the Operating Standards in accordance with the immediately preceding sentence, the City, at its cost and expense, shall perform all work required to implement, if any, and shall comply with all such modifications and changes and in no event shall Operator be excused from compliance with any such modification or change. Operator may, however, terminate the Agreement without further cause and without penalty where Operator deems the resulting modified or changed operating standards to impose an unreasonable financial or administrative burden or to be incompatible with the Operator’s goals, mission, or philosophy.

(d) Public Purpose Requirements.

The Parties agree that during the Term of this Agreement the City retains its Reserved Powers to enforce this Agreement and the Operating Standards to ensure that the Northeast Valley Animal Shelter will be dedicated and used at all times for public benefit purposes intended to promote and protect the health, safety and welfare of animals and people.

(e) In order to assure that the Northeast Valley Animal Shelter continues to operate in a manner that benefits the public and fulfills the public purposes set forth in Section 3.15(a), the Northeast Valley Animal Shelter shall be operated consistent with the Operator’s standard operating procedures manual dated June 2016.

Leases, Covenants and Easements. Operator must comply with the provisions of all leases, covenants and easements on the Shelter and in case of any conflict between the provisions of this Agreement and the leases, covenants and easements on any of the Shelter, the provisions of the leases, covenants and easements will control.

#### **ARTICLE 4 MODIFICATIONS**

Operator Requests. If Operator wishes at any time during the Term to make a fundamental change in the dimensions, character, quality or location of any part of the Northeast Valley Animal Shelter, then Operator may submit to the City, for approval, an Operator Request with respect to such change and shall submit to the City for its approval specific plans with respect to any such work. Changes that only affect Operator’s personal property shall not be considered “fundamental changes.” Operator shall be responsible for all amounts required to implement an approved Operator Request (and any costs or losses incurred in connection therewith). No Operator Request shall be implemented unless and until such Operator Request has been approved by the City.

Performance of Modifications. Subject to the other provisions of this Article 4, Operator shall ensure that an approved Operator Request is performed in a good and workmanlike manner and diligently complies with and is implemented in such manner that the costs and delays relating thereto are minimized.

## ARTICLE 5 ALTERATIONS AND IMPROVEMENTS

### Alterations and Improvements.

(a) *City Approval.* With the prior written approval of City, Operator may make alterations and improvements to the Shelter (“Alterations”) which do not affect the (i) exterior appearance of the Shelter, or (ii) structural aspects of the Shelter, as long as Operator pays for the entire cost of such Alterations, and as long as Operator agrees to remove said Alterations upon the expiration or termination of the Agreement, if requested by the City. Any time Operator proposes to make such Alterations, Operator shall provide City with prior written notice of the proposed Alterations, together with the plans and specifications. Notwithstanding anything to the contrary set forth above, Operator may make, without City’s prior written consent but after seven (7) days’ notice to City, Alterations which (i) do not require any structural or any substantial modification to the Shelter, (ii) do not affect the Structure Systems, (iii) do not affect the exterior appearance of the Shelter, and (iv) do not cost in excess of Fifty Thousand Dollars (\$50,000), adjusted for inflation from the Closing Date. Installation and placement of exterior building signage shall require prior written notice to City. Operator’s placement of non-structural visual barriers such as moveable partitions in the interior of the Shelter shall not be subject to either the notice or approval requirements. However, visual barriers will be removed by Operator if so requested by the City.

(b) *“Structure Systems” - Defined.* As used in this Article 5, the phrase “Structure Systems” shall mean any machinery, transformers, duct work, conduit, pipe, bus duct, cable, wires, and other equipment, facilities, and systems, to the extent within the Shelter, designed to supply heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life safety systems or equipment, or any other mechanical, electrical, electronic, computer, or other systems or equipment which service the Shelter in whole or in part; *provided, however*, that such equipment, facilities, and systems which serve solely the Shelter or Operator with respect to communications, alarm, security, and computer systems shall not be considered part of the Structure Systems to the extent that such equipment, facilities, and systems may be accessed and altered without interference with any Structure Systems.

(c) *Manner of Construction.* City may impose reasonable requirements as a condition of its consent to all Alterations or repairs of the Shelter or about the Shelter, including, but not limited to, the requirement that upon City’s request, Operator shall, at Operator’s expense, remove such Alterations upon the expiration or any early termination of the Term, and/or the requirement, with respect to work on the Structure Systems, that Operator utilize for such purposes only contractors, materials, mechanics, and material providers approved by City. City may require Operator to provide City, at Operator’s sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure City against any liability for claims or purported mechanic’s and materialmen’s liens and to insure completion of the work. Operator shall construct such Alterations and perform such repairs in conformance with any and all applicable rules and regulations of any federal, state, county or municipal code or ordinance and pursuant to a valid building permit, issued by the City, in

conformance with City's reasonable construction rules and regulations. All work with respect to any Alterations must be done in a good and professional manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing the work of any such Alterations, Operator shall have the work performed in such manner as not to obstruct access to the Shelter. Upon completion of any Alterations, Operator agrees at the request of City to cause a Notice of Completion to be recorded in the office of the Recorder of the County of Los Angeles in accordance with Section 3093 of the California Civil Code or any successor statute, and Operator shall deliver to City a reproducible copy of the "as-built" drawings, if any, of the Alterations.

(d) *Construction Insurance.* In the event Operator makes any Alterations, Operator agrees to carry "Builder's All Risk" insurance in an amount equal to the value of construction and materials on hand.

(e) *Payment for Alterations.* Where the work under this Article 5 is performed by City and/or City's contractor, the charges for such work shall be payable within sixty (60) days of the receipt by Operator of a sufficiently itemized invoice and billing therefor upon the substantial completion of such work. Where the work under this Article 5 is performed by Operator or Operator's contractor, upon completion of such work, Operator shall deliver to City, where applicable, evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services, and materials.

(f) *Ownership of Alterations.* All Alterations, fixtures, and equipment which may be installed or placed in or about the Shelter, from time to time, shall be at the sole cost of Operator, and as a condition to City's consent to any Alteration, City requires that Operator remove any Alteration upon the expiration or early termination of the Term, unless City agrees in writing otherwise, Operator must remove at Operator's expense such Alterations and to repair any damage to the Shelter caused by such removal. If Operator fails to complete such removal or to repair any damage caused by the removal of any Alterations, City may do so and may charge the cost thereof to Operator. Any Alterations, fixtures, and equipment remaining at the Shelter after the vacation of the Premises by Operator shall be deemed abandoned and may be disposed of or kept by the City.

(g) *Equipment Purchase Option.* At the end of the term of this Agreement, and upon mutual agreement, Department may purchase from Operator at a mutually-agreed depreciated price consistent with equipment of comparable age and use, Operator's equipment used in the operation of the Northeast Valley Animal Shelter. However, the Department shall be under no obligation to make such purchases.

(h) *Mechanics' Liens.* Operator shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Operator at or for use in the Shelter, which claims made against City and/or purport to be secured by any mechanic's or materialmen's lien against the Shelter, or any interest therein. If Operator fails to pay such claims or demands or if Operator shall, in good faith, contest the validity of any such lien, claim or demand, then Operator shall, at its sole expense, defend itself and City against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the City or the Shelter, upon the condition that if City shall require, Operator shall furnish

to City a surety bond satisfactory to City in an amount equal to such contested lien, claim or demand indemnifying City against liability for the same and holding the Northeast Valley Animal Shelter property free from the effect of such lien or claim. In addition, City may require Operator to pay City's reasonable attorneys' fees and costs in participating in such action if City shall decide it is to City's best interest so to do.

(i) *Nonresponsibility and Work Commencement Notices.* City shall have the right at all times to post and keep posted on the Center any notices permitted or required by law, or which City shall deem proper for the protection of City and the Shelter, and any other party having an interest therein, from liens, and Operator shall give to City at least ten (10) business days prior written notice of the expected date of commencement of and work relating to Alterations or additions to the Shelter.

(j) *Failure to Comply with Conditions.* Should Operator make any Alterations without the prior approval of City, or, where required, use a contractor not expressly approved by City, or otherwise fail to comply with the conditions of this Article 5, City may, at any time during the Term, require that Operator remove any part or all of the same.

(k) *Environmental Compliance.* City represents and warrants that the Northeast Valley Animal Shelter was built in compliance with the Environmental Laws of the United States, State of California, and the County and City of Los Angeles. In the event of a change in federal or state Environmental Laws requiring structural changes to the Northeast Valley Animal Shelter in order to remain in compliance with applicable Environmental Laws, including those governing the disposal of animal waste, City shall bear the expense of, and be liable for same. Operator is responsible for compliance with CEQA, if applicable, in regard to any alterations and improvements performed or requested by Operator, and is responsible for compliance with CEQA in the management and operation of its programs and activities at the Northeast Valley Animal Shelter.

## **ARTICLE 6 FEES; REVENUES**

Fee Revenues. Operator shall, at all times during the Term, (i) have the right to establish, collect and enforce payment of fees set forth in **Attachment C** (Maximum Fees) for services provided at the Northeast Valley Animal Shelter in accordance with the provisions of Article 6 of this Agreement and (ii) have the right, title, entitlement and interest in these fees during the Term of this Agreement. For the Term of this Agreement the Fees shall not exceed the rates set forth in **Attachment C** (Maximum Fees) adjusted for inflation not to exceed an annual 5% and commencing one year from the date of execution of the Agreement.

Fee Rate Notices. Operator shall provide to the City, no later than the end of each fiscal year, notice of the fees and types of fees charged by the Operator for services provided at the Northeast Valley Animal Shelter. Such notice shall include the fees and types of fees charged during the prior fiscal year and expected to be charged during the next fiscal year. Such notice shall be provided by Operator to the City solely for informational purposes and, consistent with and to the extent permitted by this Article 6 and **Attachment C**, such rates may be changed at

any time and from time to time by Operator without the prior approval of the City, but notice of such changes shall be given to the City. Consistent with and to the extent permitted by this Article 6 and **Attachment C**, Operator may charge different types of fees as it determines are appropriate in its discretion, including variable fees, weekday, weekend and special event fees and discounts to be determined by Operator.

## **ARTICLE 7 REPORTING; AUDITS; INSPECTIONS**

### Reports.

(a) *Incident Management and Notifications.* Operator shall provide notice to the City within 24 hours of all emergencies, and promptly provide notice to the City of all accidents and incidents occurring on or at the Northeast Valley Animal Shelter, and of all claims in excess of \$50,000 made by or against Operator, or potential claims in excess of \$50,000 that Operator reasonably expects to make against, or to be made against it by, third parties. Notwithstanding the foregoing, Operator shall not be required to provide City with notice of worker injuries reported to Operator in accordance with its workplace policies and workers' compensation reporting requirements, except in situations resulting in death or great bodily injury.

(b) *Environmental Incident Management and Notifications.* Operator shall provide notice to the City within 24 hours following Operator becoming aware of the discharge, dumping, spilling (accidental or otherwise) of any reportable quantity as defined under applicable Environmental Law, of Hazardous Substances occurring on or at the Northeast Valley Animal Shelter and the location at which the incident has occurred, the time, the agencies involved, the damage that has occurred and the remedial action taken.

(c) *Financial Reports.* Until the End Date, Operator shall deliver to the City (i) within 130 days of the end of each calendar Year, a copy of Operator's audited financial statements, including its Statement of Financial Position, Statement of Activities, Statement of Cash Flows, and Notes to the Financial Statements with the report of the independent certified public accountant. Such financial statements shall reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements.

### Information.

(d) *Furnish Information.* Operator shall, at Operator's cost and expense, at the request of the City and at any and all reasonable times during the Term: (i) make available or cause to be made available (and, if requested by the City, furnish or cause to be furnished) to the City all Information relating to the Northeast Valley Animal Shelter Operations, this Agreement or the Northeast Valley Animal Shelter as may be specified in such request and as shall be in the possession or control of Operator or its Representatives, and (ii) permit the City, upon 10 Business Days' prior notice to Operator (which notice shall identify the persons the City requests to be present for an interview and describe with reasonable specificity the subject matter to be raised in the interview), to meet with and discuss the obligations of the Operator under this

Agreement with any of the directors, officers, employees or managers of Operator or with their respective Representatives (it being agreed that Operator and/or its legal counsel shall have the right to be present during any such discussions with Operator or Representatives of the Operator), for the purpose of enabling the City to determine whether Operator is in compliance with this Agreement, *provided* that, in the case of investigations of possible criminal conduct or City ordinance violations, no prior notice shall be required to Operator. For the avoidance of doubt, this Section 7.2(a) does not impose a requirement to retain Information not otherwise retained in the normal course of business or required to be retained by applicable Law. Furthermore, said obligation to furnish information shall not require Operator to make available or otherwise disclose information regarding the identity of its donors, including donors directing funds to support the operations of the Northeast Valley Animal Shelter. Operator's donor list shall at all times be the confidential, privileged and proprietary information of Operator, and the donor list shall be solely owned by Operator.

(e) *Confidentiality.* Unless disclosure is required by applicable Law, the City shall keep confidential any Information obtained from Operator or its Representatives that (i) pursuant to the California Public Records Act, California Government Code Section 6250 et seq., where Operator has placed City on notice that the information constitutes trade secrets or commercial or financial information (A) where the trade secrets or commercial or financial information are proprietary, privileged or confidential, or (B) where disclosure of the trade secrets or commercial or financial information may cause competitive harm to Operator and (ii) is designated as such by Operator in writing to the City; *provided, however*, that the City shall have the right to determine, in its reasonable discretion, whether any exceptions to disclosure from the California Public Records Act apply to any such Information; *provided further* that in the event the City determines that the California Public Records Act requires disclosure of such Information, the City shall provide reasonable notice to, and shall consult with Operator prior to disclosure of such Information. In the event that the Operator requests the City to defend an action seeking the disclosure of Information that Operator deems to be confidential pursuant to this Section 7(b), the Operator shall reimburse the City for the reasonable costs and expenses (including attorneys' fees of the prevailing party) incurred by the City in defending any such action.

(f) *Inspection, Audit and Review Rights of the City. Audit Right.* In addition to the rights set out in Section 7.2, the City may, at all reasonable times, upon 10 Business Days' prior notice, except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no prior notice shall be required, cause a Representative designated by it to carry out an Audit of the Information required to be maintained or delivered by Operator under this Agreement in connection with the performance of the Northeast Animal Shelter Operations for the purpose of verifying the information contained therein and shall be entitled to make copies thereof and to take extracts therefrom, at the City's expense, but, in any event, subject to Section 7.2(b). Operator, at the cost and expense of Operator, shall, at reasonable times, make available or cause to be made available to the City or its designated Representative such information and material as may reasonably be required by the City or its designated Representative for its purposes and otherwise provide such cooperation as may be reasonably required by the City in connection with the same.

(g) *Inspection Right.* The City and its Representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Northeast Animal Shelter and every part thereof and Operator, at the reasonable cost and expense of Operator, shall and shall cause its Representatives to furnish the City with every reasonable assistance for inspecting the Northeast Animal Shelter and the Northeast Animal Shelter Operations for the purpose of Auditing the Information or ascertaining compliance with this Agreement and applicable Law.

(h) *Tests.* The City and its Representatives shall, with the prior consent of Operator (which shall not be unreasonably withheld, conditioned or delayed), except in the case of investigations of possible criminal conduct or City ordinance violations, in which case no consent shall be required, be entitled, at the sole cost and expense of the City, and at any time and from time to time, to perform or cause to be performed any test, study or investigation in connection with the Northeast Animal Shelter or the Northeast Animal Shelter Operations as the City may reasonably determine to be necessary in the circumstances and Operator, at its own cost and expense, shall and shall cause its Representatives to furnish the City or its Representatives with reasonable assistance in connection with the carrying out of such tests, procedures, studies and investigations.

(i) *No Waiver.* Failure by the City or its Representatives to inspect, review, test or Audit Operator's responsibilities under this Agreement or any part thereof or the Information, shall not constitute a waiver of any of the rights of the City hereunder or any of the obligations or liabilities of Operator hereunder. Inspection, review, testing or Audit not followed by a notice of Operator Default shall not constitute a waiver of any Operator Default or constitute an acknowledgement that there has been or will be compliance with this Agreement and applicable Law.

(j) *No Undue Interference.* In the course of performing its inspections, reviews, tests and Audits hereunder, the City shall minimize the effect and duration of any disruption to or impairment of the Northeast Valley Animal Shelter Operations or Operator's rights or responsibilities under this Agreement, having regard to the nature of the inspections, reviews, tests and Audits being performed, except as necessary in the case of investigations of possible criminal conduct or City ordinance violations.

Audits, Assistance, Inspections and Approvals. Wherever in this Agreement reference is made to the City or its Representatives providing assistance, services, Approvals or consents to or on behalf of Operator or its Representatives or to the City or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Northeast Valley Animal Shelter, the Northeast Valley Animal Shelter Operations or any part thereof or the books, records, documents, budgets, proposals, requests, procedures, certificates, plans, drawings, specifications, contracts, agreements, schedules, reports, lists or other instruments of the Operator or its Representatives, such undertaking by the City or its Representatives shall not relieve or exempt Operator from, or represent a waiver of, any requirement, liability, Operator Default, covenant, agreement or obligation under this Agreement or at law or in equity and shall not create or impose any requirement, liability, covenant, agreement or obligation (including an obligation to provide other assistance, services or Approvals) on the City or its Representatives not otherwise created or imposed pursuant to the express provisions of this Agreement.

## ARTICLE 8 COMPLIANCE WITH LAWS

Compliance with Laws. Operator must at all times at its own cost and expense observe and comply, in all material respects, and cause the Northeast Valley Animal Shelter Operations to observe and comply, in all material respects, with all applicable Federal, California and local Laws now existing or later in effect that are applicable to it or such Northeast Animal Valley Shelter Operations, including but not limited to Federal, State and local laws pertaining to the operation of animal shelters and the care of animals and with the terms of the Injunction as it pertains to the operation of the Northeast Valley Animal Shelter and those Laws expressly enumerated in this Article 8. Operator must notify the City within seven days after receiving notice from a Governmental Authority that Operator may have violated any Laws as described above.

**Section 8.1. Injunction.** Operator shall, at all times, be required to comply with the Injunction. Consistent with the restrictions in the Injunction, **with respect to the operation of the Northeast Valley Animal Shelter**, Operator is prohibited from and shall not knowingly:

- (a) engage in TNR for feral cats at the Northeast Animal Shelter;
- (b) perform spay or neuter surgeries on feral cats or ship feral cats from the Shelter to other locations for spay or neuter surgeries;
- (c) disseminate TNR information from Northeast Animal Shelter nor have a link on any Northeast Valley Animal Shelter website to TNR information or groups;
- (d) move feral cats to other locations for TNR purposes;
- (e) knowingly release feral cats from the Northeast Valley Animal Shelter to TNR groups or individuals for release or return into colonies;
- (f) develop or distribute TNR literature from or associated with the Northeast Animal Shelter;
- (g) refer complaints about feral cats to TNR groups or individuals who engage in TNR;
- (h) conduct any educational, outreach, or development programs related to feral cats or TNR of feral cats.

Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to preclude Operator from engaging in TNR activities generally from any other facility or location, from disseminating TNR information, or linking to other organizations involved in TNR activity on or through its website if not connected to the Northeast Valley Animal Shelter. Moreover, Operator shall inform individuals who affirmatively request information about TNR at the Northeast Valley Animal Shelter that “Because of an injunction against the City of Los Angeles, which owns this facility, we can’t provide you with any information about TNR or engage in any TNR-related activities from this location.”

Non-Discrimination.

(i) *Non-Discrimination in Use of Premises.* There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition in the use, occupancy, tenure, or enjoyment of the Northeast Valley Animal Shelter or any operations or activities conducted on the Northeast Valley Animal Shelter nor shall Operator or any person claiming under or through Operator establish or permit any such practice or practices of discrimination or segregation.

(j) *Non-Discrimination in Employment.* Operator agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition.

(k) *Equal Employment Practices.* This Agreement is a contract with or on behalf of the City of Los Angeles for which the consideration is \$1,000 or more. Accordingly, during the performance of this Agreement, Operator further agrees to comply with Section 10.8.3 of the Administrative Code ("Equal Employment Practices"). By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Operator to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Operator. Upon a finding duly made that Operator has failed to comply with the equal employment practices provisions of this Agreement, this Agreement may be forthwith terminated.

(l) *Affirmative Action Program.* This Agreement is a non-construction contract with or on behalf of the City for which the consideration is \$100,000 or more. Accordingly, during the performance of this Agreement, Operator further agrees to comply with Section 10.8.4 of the Administrative Code ("Affirmative Action Program"), with respect to its operations at the Northeast Valley Animal Shelter. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Operator to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Operator. Upon a finding duly made that Operator has breached the Affirmative Action Program provisions of this Agreement, this Agreement may be forthwith terminated.

(m) *Equal Benefits Provisions.* This Agreement is subject to Section 10.8.2.1, Article 1, Chapter 1, Division 10 of the Administrative Code ("Equal Benefits Provisions") related to equal benefits to employees. Operator agrees to comply with the provisions of Section 10.8.2.1. By way of specification but not limitation, pursuant to Section 10.8.2.1.c of the Administrative Code, the failure of Operator to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice

and an opportunity to be heard has been given to Operator. Upon a finding duly made that Operator has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated.

(n) *Service Contract Worker Retention Ordinance.* This Agreement is subject to the Service Contract Worker Retention Ordinance (“SCWRO”) (Section 10.36, *et seq.*, of the Administrative Code. The SCWRO requires that, unless specific exemptions apply, all employers (as defined) under contracts that are primarily for the furnishing of services to or for the City and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

(o) *Child Support Assignment Orders.* This Agreement is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the Administrative Code related to Child Support Assignment Orders. Pursuant to this Section, Operator (and any subcontractor of Operator providing services to City under this Agreement shall (i) fully comply with all State and Federal employment reporting requirements for Operator’s or Operator’s subcontractor’s employees applicable to Child Support Assignment Orders; (ii) certify that the principal owner(s) of Operator and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (iii) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, *et seq.*; and (iv) maintain such compliance throughout the Term of this Agreement. Pursuant to Section 10.10.b of the Administrative Code, failure of Operator or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Operator or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Operator by City (in lieu of any time for cure provided in Section 12.1).

(p) *General Provisions: Living Wage Policy.* This Agreement is subject to the Living Wage Ordinance (“LWO”) (Section 10.37, *et seq.*, of the Administrative Code. The LWO requires that, unless specific exemptions apply, any employees of the Operator are covered by the LWO if any of the following applies: (1) the services are rendered on premises at least of portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City has determined in writing that coverage would further the proprietary interests of the City. Employees covered by the LWO are required to be paid not less than a minimum wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12)

compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(b). The LWO requires employers to inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Operator shall permit access to work sites for authorized City representatives to review the operation, payroll, and related documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Operator shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Operator agrees to comply with federal law prohibiting retaliation for union organizing.

(q) *Living Wage Coverage Determination.* The CAO has made the initial determination that this Agreement is subject to the LWO. Operator, although subject to the LWO, may be exempt from most of the requirements of the LWO if Operator qualifies for such exemption under the provisions of the LWO. Determinations as to whether an employer or employee is exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. Applications for exemption must be renewed every two (2) years. To the extent Operator claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Operator to prove such non-coverage or exemption, and, where applicable, renew such exemption.

(r) *Compliance; Termination Provisions and Other Remedies.* Living Wage Policy. If Operator is not initially exempt from the LWO, Operator shall comply with all of the provisions of the LWO, including payment to employees at the minimum wage rates, effective on the Execution Date of this Agreement, and shall execute a Declaration of Compliance Form contemporaneously with the execution of this Agreement. If Operator is initially exempt from the LWO, but later no longer qualifies for any exemption, Operator shall, at such time as Operator is no longer exempt, comply with the provisions of the LWO and execute the then-currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Operator violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided in Section 12.1 of this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

(s) *Tax Registration Certificates and Tax Payments.* This Section 8.2(k) is applicable where Operator is engaged in business within the City of Los Angeles and Operator is required to obtain a Tax Registration Certificate ("TRC") pursuant to one or more of the following articles (collectively "Tax Ordinances") of Chapter II of the Los Angeles Municipal Code: Article 1 (Business Tax Ordinance) [section 21.00, *et seq.*], Article 1.3 (Commercial Operator's Occupancy Tax) [section 21.3.1, *et seq.*], Article 1.7 (Transient Occupancy Tax) [section 21.7.1, *et seq.*], or Article 1.11 (Payroll Expense Tax) [section 21.11.1, *et seq.*]. Prior to the execution of this Agreement, or the effective date of any extension of the Term or renewal of this Agreement, the Operator shall provide to the CAO proof satisfactory to the CAO that

Operator has the required TRCs and that Operator is not then currently delinquent in any tax payment required under the Tax Ordinances. City may terminate this Agreement upon thirty (30) days' prior written notice to Operator if City determines that Operator failed to have the required TRCs or was delinquent in any tax payments required under the Tax Ordinances at the time of entering into, extending the Term of, or renewing this Agreement. City may also terminate this Agreement upon ninety (90) days prior written notice to Operator at any time during the Term of this Agreement if Operator fails to maintain required TRCs or becomes delinquent in tax payments required under the Tax Ordinances and Operator fails to cure such deficiencies within the ninety (90) day period.

(t) *Slavery Disclosure Ordinance.* This Agreement is subject to the applicable provisions of the Slavery Disclosure Ordinance ("SDO") (Section 10.41, *et seq.*, of the Los Angeles Administrative Code. Unless otherwise exempt in accordance with the provision of the Ordinance, Operator certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available to City if City determines that the Operator failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

(u) *Americans with Disabilities Act.* Operator hereby certifies that the Center will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations during the term of this Agreement. Operator will provide reasonable accommodations to allow qualified individuals with disabilities to have access to the Northeast Animal Shelter and have the benefit of the Animal Welfare Services in accordance with the provisions of the Americans with Disabilities Act. Operator will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by Operator, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this Section 8.2(m).

(v) *Contractor Responsibility Ordinance.* This Agreement is subject to the Contractor Responsibility Ordinance ("CRO") (Section 10.40, *et seq.*, of the Los Angeles Administrative Code ("LAAC") and the rules and regulations promulgated pursuant thereto as they may be updated. The CRO requires that, unless specific exemptions apply as specified in LAAC 10.40.4(a), lessees or licensees of City property who render services on the leased or licensed premises are covered by the CRO if any of the following applies: (1) the services are rendered on premises at least a portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or (3) designated administrative agency of the City has determined in writing that coverage would further the proprietary interests of the City. Lessees or licensees of City property who are not exempt pursuant to LAAC 10.40.4 (a) or (b), unless subject to the CRO solely due to an amendment to an existing lease or license, are required to have completed a questionnaire ("Questionnaire") signed under penalty of perjury designed to assist the City in determination that the lessee or licensee is one that has the necessary quality, fitness and capacity to perform the work set forth in the contract. All lessees or licensees of City property who are covered by the CRO, including

those subject to the CRO due to an amendment, are required to complete the following Pledge of Compliance (“POC”):

(1) comply with all applicable federal state, and local laws and regulations in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(2) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation that may result in a finding that the lessee or licensee did not comply with clause (1) of this Section 8.2(n) in the performance of the lease or license;

(3) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the lessee or licensee has violated clause (1) of this Section 8.2(n) above in the performance of the lease or license;

(4) ensure within thirty (30) days (or such shorter time as may be required by the awarding authority) that subcontractors working on the lease or license submit a POC to the awarding authority signed under penalty of perjury; and

(w) Operator shall:

(1) notify the awarding authority within thirty (30) calendar days after receiving notification that any governmental agency has initiated an investigation that may result in a finding that Operator did not comply with any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees;

(2) notify the awarding authority within thirty (30) calendar days of receiving notice of any findings by a government agency or court of competent jurisdiction that Operator violated any applicable federal, state, or local law in the performance of this Agreement including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(3) notify the awarding authority within thirty (30) calendar days of becoming aware of any information regarding its subcontractors and investigations or findings regarding the subcontractor’s violations of any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

(x) Updates of information contained in Operator’s responses to the Questionnaire must be submitted to the awarding authority within thirty (30) days of any changes to the responses if the change would affect Operator’s fitness and ability to continue performing this Agreement. Notwithstanding the above, Operator shall not be required to provide updates to the Questionnaire if Operator became subject to the CRO solely because of an amendment to the original lease or license. Operator shall cooperate in any investigation pursuant to CRO by providing such information as shall be requested by City. Operator agrees that City may keep the identity of any complainant confidential. Operator shall ensure that subcontractors who

perform work on this Agreement abide by these same updating requirements including the requirement to:

(1) notify the awarding authority within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the subcontractor did not comply with any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees; and

(2) notify the awarding authority within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the subcontractor violated any applicable federal, state, or local law in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, wage and hour, and licensing laws which affect employees.

The requirement that Operator provide Questionnaires and updates to Questionnaire responses does not apply to subcontractors.

(y) If Operator is not exempt from the CRO, Operator shall comply with all of the provisions of the CRO and this Agreement. Failure to comply with the provisions of the CRO, including without limitation the requirements that all responses to the Questionnaire are complete and accurate, to provide updates as provided therein and to correct any deficiencies within ten (10) days of notice by City, or failure to comply with the provisions of this Agreement shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue any legal remedies that may be available, including those set forth in the CRO. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the CRO.

## **ARTICLE 9 INDEMNIFICATION**

Indemnification by the Operator. Except for the active negligence or willful misconduct of City, Operator undertakes and agrees to defend, indemnify and hold harmless City and any and all of City's boards, officers, agents, and employees from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to reasonable and necessary attorney's fees and cost of litigation, damage or liability of any nature whatsoever, that may arise out of or in connection with Operator's breach of this Agreement or the use of the Northeast Valley Animal Shelter by Operator, its agents, employees, customers, or any other person using or attending any of Operator's projects or programs on the Premises. Such defense and indemnification shall include any suits and causes of action, claims, losses, demands and expenses, including, but not limited to reasonable and necessary attorney's fees and cost of litigation, damage or liability arising out of any violation of the Injunction by Operator. Said indemnification obligation shall not apply to any effort by any party to modify the Injunction, to amend claims in the current Injunction litigation insofar as these claims allege that entering into this Agreement by the City is or should be considered a violation of the Injunction or to new

lawsuits relating to TNR unless resulting from Operator's actions, nor shall it apply to the City's future CEQA determinations in any way related to TNR. Subject to the City's approval, which shall not be unreasonably withheld, Operator shall have the right to select counsel of its choice to provide the City's defense under this indemnification and defense provision.

Indemnification by the City. Except for the active negligence or willful misconduct of Operator, the City shall defend, indemnify and hold harmless the Operator and each of its Representatives from and against (i) any Losses actually suffered or incurred by Operator or any such Representative, arising from any claims or lawsuits based upon, arising out of, occasioned by or attributable to any failure by the City or its Representatives to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in this Agreement or arising out of any breach of the City's representations and warranties; or (ii) all suits and causes of action, claims, losses, demands and expenses, including, but not limited to reasonable and necessary attorney's fees and cost of litigation, damage or liability of any nature whatsoever, that may arise out of or in connection with City's operations in the Shelter as permitted by this Agreement.

Agency for Representatives. Each of the City and Operator agrees that it accepts each indemnity in favor of any of its Representatives, as agent and trustee of that Representative and agrees that each of the City and Operator may enforce an indemnity in favor of its Representatives on behalf of that Representative.

#### Third Party Claims.

(a) *Notice of Third Party Claim.* If an Indemnified Party receives notice of the commencement or assertion of any Third Party Claim, the Indemnified Party shall give the Indemnifier reasonably prompt notice thereof, but in any event no later than 45 days after receipt of such notice of such Third Party Claim. Such notice to the Indemnifier shall describe the Third Party Claim in reasonable detail (and include a copy of any complaint or related documents) and shall indicate, if reasonably practicable, the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) *Defense of Third Party Claim.* The Indemnifier may participate in or assume the defense of any Third Party Claim by giving notice to that effect to the Indemnified Party not later than 30 days after receiving notice of that Third Party Claim (the "Notice Period"). The Indemnifier's right to do so shall be subject to the rights of any insurer or other Party who has potential liability in respect of that Third Party Claim. The Indemnifier agrees to pay all of its own expenses of participating in or assuming each defense. The Indemnified Party shall co-operate in good faith in the defense of each Third Party Claim, even if the defense has been assumed by the Indemnifier and may participate in such defense assisted by counsel of its own choice at its own expense. If the Indemnified Party has not received notice within the Notice Period that the Indemnifier has elected to assume the defense of such Third Party Claim, the Indemnified Party may assume such defense, assisted by counsel of its own choosing and the Indemnifier shall be liable for all reasonable costs and expenses paid or incurred in connection therewith and any Loss suffered or incurred by the Indemnified Party with respect to such Third Party Claim.

(c) *Assistance for Third Party Claims.* The Indemnifier and the Indemnified Party will use all reasonable efforts to make available to the Party which is undertaking and controlling the defense of any Third Party Claim (the “Defending Party”), (i) those employees whose assistance, testimony and presence is necessary to assist the Defending Party in evaluating and in defending any Third Party Claim, and (ii) all documents, records and other materials in the possession of such Party reasonably required by the Defending Party for its use in defending any Third Party Claim, and shall otherwise co-operate with the Defending Party. The Indemnifier shall be responsible for all reasonable expenses associated with making such documents, records and materials available and for all expenses of any employees made available by the Indemnified Party to the Indemnifier hereunder, which expense shall not exceed the actual cost to the Indemnified Party associated with such employees.

**Direct Claims.** Any Direct Claim shall be asserted by giving the Indemnifier reasonably prompt notice thereof, but in any event not later than 90 days after the Indemnified Party becomes aware of such Direct Claim. The Indemnifier shall then have a period of 45 days within which to respond in writing to such Direct Claim. If the Indemnifier does not so respond within such 45-day period, the Indemnifier shall be deemed to have rejected such Claim, and in such event the Indemnified Party may submit such Direct Claim to the dispute resolution process set forth in Article 12.

**Failure to Give Timely Notice.** A failure to give timely notice in accordance with this Article 12 shall not affect the rights or obligations of any Party except and only to the extent that, as a result of such failure, a Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise directly and materially damaged as a result of such failure.

**Reductions and Subrogation.** If the amount of any Loss incurred by an Indemnified Party at any time subsequent to the making of an indemnity payment hereunder (an “Indemnity Payment”) is reduced by any recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the amount of such reduction (less any costs, expenses (including Taxes) or premiums incurred in connection therewith), together with interest thereon from the date of payment thereof at the Bank Rate, shall promptly be repaid by the Indemnified Party to the Indemnifier. Upon making a full Indemnity Payment, the Indemnifier shall, to the extent of such Indemnity Payment, be subrogated to all rights of the Indemnified Party against any third party in respect of the Loss to which the Indemnity Payment relates. Until the Indemnified Party recovers full payment of its Loss, any and all claims of the Indemnifier against any such third party on account of such Indemnity Payment shall be postponed and subordinated in right of payment to the Indemnified Party’s rights against such third party.

**Payment and Interest.** All amounts to be paid by an Indemnifier hereunder shall bear interest at a rate per annum equal to the Bank Rate, calculated annually and payable monthly, both before and after judgment, from the date that the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense in respect of a Loss for which the Indemnifier is liable to make payment pursuant to this Article 9, to the date of payment by the Indemnifier to the Indemnified Party.

Other Matters. To the extent permissible by applicable law, the Operator waives any limits to the amount of its obligations to defend, indemnify, hold harmless or contribute to any sums due under any Losses, including any claim by any employee of the Operator, that may be subject to the provisions of Section 3700 *et seq.* of the California Labor Code or any other related law or judicial decision.

Offset Rights; Limitations on Certain Damages.

(d) Any other provision herein notwithstanding, each Party's obligations under this Agreement are subject to, and each Party shall have the benefit of, all defenses, counterclaims, rights of offset or recoupment or other claims and rights, including the right to deduct payments due to the other Party hereunder (collectively, "Offsets") which such Party may have at any time against such other Party (or any of their respective successors and assigns) or any transferee or assignee of any such other Party's rights as against such Party or any part thereof or interest therein, whether the claim or right of such Party relied upon for such purpose is matured or unmatured, contingent or otherwise, and no transfer or assignment of this Agreement or any other obligation of such other Party, or of any rights in respect thereof, pursuant to any plan of reorganization or liquidation or otherwise shall affect or impair the availability to each Party of the Offsets.

(e) In no event shall any Party be liable to the other Party under this Agreement for consequential, indirect, exemplary or punitive damages (except for claims for fraud or for intentional misrepresentation or intentional breach).

Survival. This Article 9 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants hereunder or by any termination or rescission of this Agreement by any Party.

## **ARTICLE 10 INSURANCE**

Insurance Coverage Required. Operator shall provide and maintain at its own expense, or cause to be maintained, during the Term and during any time period following expiration if Operator is required to return and perform any additional work, the insurance coverage and requirements specified below, which insurance amounts may be increased by the City's Risk Manager, insuring the Northeast Valley Animal Shelter and all Northeast Valley Animal Shelter Operations (the "Required Coverage").

General Liability Insurance. Operator shall provide and maintain general liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence, Five Million Dollars (\$5,000,000) aggregate for bodily injury and property damage.

Automobile Liability Insurance. When any motor vehicles (owned, non-owned or hired) are used in connection with this Agreement, Operator shall provide automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

Builder's Risk Insurance. When Operator undertakes any construction, maintenance or repairs to the Northeast Valley Animal Shelter, Operator shall provide and maintain all risk builder's risk insurance covering loss, damage or destruction of property, including materials in transit and stored on and off site, in an amount equal to the value of construction and materials on hand.

Workers' Compensation and Employer's Liability Insurance. By signing this Agreement, Operator hereby certifies that it is aware of the provisions of Sections 3700, *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during the Term of this Agreement. A Waiver of Subrogation in favor of City is required. Operator shall provide and maintain workers' compensation covering all employees who agree to provide a service under this Agreement and employer's liability insurance in an amount not less than \$1,000,000 per accident for bodily injury or disease.

Additional Insureds /Additional Interest/Loss Payee. Operator agrees that City, its boards, officers, agents and employees shall be included as:

- a) Additional insureds in all required general liability and automobile liability insurance.
- b) Named insured in all required builder's risk insurance.
- c) Loss payee as its interests may appear in all required property insurance.

Operator's Property. City will not insure Operator's equipment, stored goods, other personal property, fixtures, or Operator improvements, nor such personal property owned by Operator's sub-Operators or assignees, if any, or invitees. City shall not be required to repair any injury or damage to any personal property or trade fixtures installed in the Northeast Valley Animal Shelter by Operator caused by fire or other casualty, or to replace any such personal property or trade fixtures. Operator may, at Operator's sole option and expense, obtain physical damage insurance covering Operator's equipment, stored goods, personal property, fixtures or Operator improvements or obtain business interruption insurance.

Notice of Change in Insurance. All insurance policies required under this Agreement shall expressly provide that such insurance shall not be cancelled or materially reduced in coverage or limits except after thirty (30) days' (ten (10) days for non-payment of premium) written notice has been given to City Administrative Officer, Risk Management, City Hall East, Room 1240, 200 North Main Street, Los Angeles, California 90012.

Default. If insurance is canceled, lapsed, or reduced below minimums required in this Article 10, City may consider this Agreement to be in default and may terminate it. Termination shall occur at the expiration of a three (3) day notice given in accordance with the provisions of the Code of Civil Procedure Section 1162. At the termination of three (3) days or sooner, the Operator shall vacate the Northeast Valley Animal Shelter and Operator shall have no right to possess or control the Northeast Valley Animal Shelter or the operations conducted therein. If Operator does not vacate, City may utilize any and all court proceedings to obtain a right to possession.

**Adjustment of Insurance Levels.** The City reserves the right at any time during the Term or any extension or holdover of this Agreement, applying generally accepted risk management principles, to change the amounts and types of insurance required hereunder upon giving Operator ninety (90) days prior written notice in order to insure that Operator is maintaining customary and reasonable insurance amounts and types during the Term of the Agreement. In the event the City determines that additional insurance or amounts are required, the City will allow Operator to adjust the Maximum Fee Schedule (Schedule X) proportionately.

**Waiver of Subrogation.** With respect to property damage, each Party agrees to waive its rights of subrogation for any claim applicable to the California Standard Fire Policy with Extended Coverage and Vandalism and Malicious Mischief endorsements.

**Admitted Carrier/Licensed California Broker.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the City.

**Contribution Not Required.** Operator's insurance shall be primary and will not require contribution or shall be endorsed to effect these provisions.

**Separation of Insureds.** Except with respect to the insurance company's limits of liability, each liability insurance policy shall apply separately to each insured against whom a claim or suit is brought. The inclusion of any person or organization as an insured shall not affect any right such person or organization would have as a claimant if not so included.

**Insurance Approval.** All insurance required hereunder shall conform to the City requirements established by Charter, ordinance or policy. Evidence of Insurance shall be approved by the Office of the Administrative Officer, Risk Management prior to tenancy under this Agreement in accordance with the Los Angeles Administrative Code.

**Evidence of Insurance.** Electronic submission via Track4LA<sup>®</sup>, the City's online insurance compliance system (<http://track4la.lacity.org>), is the preferred method for submitting evidence of insurance. Track4LA<sup>®</sup> can be used by insurance brokers and agents to submit Operator insurance certificates directly to the City using the ACORD 25 Certificate of Liability Insurance in electronic format. Insurance Industry Certificates of Insurance other than the ACORD 25 may also be accepted. However all Certificates must provide a thirty (30) days' notice provision (ten (10) days for non-payment of premium) and an Additional Insured Endorsement naming the City an additional insured completed by Operator's insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Insurance Certificate must state that the City is an automatic or blanket additional insured. An endorsement naming the City as an insured is required on all builders' risk policies. An endorsement naming the City as Loss Payee as its Interest may appear is required on all property coverages. Alternatively, Operator may submit a copy of the full insurance policy containing language which complies with the requirements of this Article 10. Additional Insured Endorsements do not apply to the following: Indication of compliance with statute, such as Workers' Compensation Law.

## **ARTICLE 11 DISPUTE RESOLUTION**

Scope. Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 11.

Informal Dispute Resolution Procedures. The Parties shall attempt in good faith to resolve such dispute within 15 days following receipt by the other Party of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by either Party to the other, the dispute shall be referred to the Designated Senior Person of each Party. The Designated Senior Persons shall negotiate in good faith to resolve the dispute, conferring as often as they deem reasonably necessary. Statements made by representatives of the Parties during the dispute resolution procedures set forth in this Section 11.2 and documents specifically prepared for such dispute resolution procedures shall be considered part of settlement negotiations and shall not be admissible as evidence in any arbitration or other litigation proceeding between or involving the Parties without the mutual written consent of the Parties.

Non-Binding Mediation. Non-binding mediation of a dispute under this Agreement may not be commenced until the earlier of: (i) such time as both of the Designated Senior Persons, after following the procedures set forth in Section 11.2, conclude in good faith that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) 15 days after the notice referring the dispute to the Designated Senior Persons, pursuant to Section 11.2. If, after such time period, the dispute remains unresolved, the Parties shall attempt to resolve the dispute through non-binding mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Procedures.

Provisional Remedies. No Party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager in connection with the collection and retention of Other Operator Revenues.

## **ARTICLE 12 DEFAULTS**

Default by the Operator.

(a) *Events of Default*. The occurrence of any one or more of the following events during the Term shall constitute an “Operator Default” under this Agreement:

(i) if Operator knowingly engages in TNR activities prohibited by this Agreement, as part of its operations in the Northeast Animal Valley Shelter only and not in its other operations, and such activities are determined by a court of law to be a violation of the Injunction; or

(ii) if Operator fails to comply with, perform or observe any material obligation, covenant, agreement, term or condition in this Agreement, and such failure continues and is not remedied

for a period of thirty (30) calendar Days following notice thereof (giving particulars of the failure in reasonable detail) from the City to Operator or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that Operator has demonstrated to the satisfaction of the City, acting reasonably, that (A) it is proceeding, and will proceed, with all due diligence to cure or cause to be cured such failure, (B) its actions can be reasonably expected to cure or cause to be cured such failure within a reasonable period of time acceptable to the City, acting reasonably and (C) such failure is in fact cured within such period of time; or

(iii) if Operator (A) admits, in writing, that it is unable to pay its debts as such become due, (B) makes an assignment for the benefit of creditors, (C) files a voluntary petition under Title 11 of the U.S. Code, or if such petition is filed against it and an order for relief is entered, or if the Operator files any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any other present or future applicable Law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Operator or of all or any substantial part of its properties or of the Northeast Valley Animal Shelter or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 12.1(a);

(b) *Remedies of the City upon Operator Default.* Upon the occurrence of an Operator Default, the City may, by notice to Operator in accordance with the terms hereof, declare Operator to be in default and may, subject to the provisions of Article 11, do any or all of the following as the City, in its discretion, shall determine:

(i) if Operator Default is by reason of the failure to pay any monies to third parties, the City may (without obligation to do so) make payment on behalf of Operator of such monies, and any amount so paid by the City shall be payable by Operator to the City within 10 Business Days after demand therefor;

(ii) the City may seek specific performance, injunction or other equitable remedies, it being acknowledged that damages are an inadequate remedy for an Operator Default;

(iii) the City may seek to recover its Losses arising from such Operator Default and any amounts due and payable under this Agreement and, in connection therewith, exercise any recourse available to any Person who is owed damages or a debt;

(iv) with respect to those Operator Defaults that entitle the City to terminate this Agreement pursuant to Section 12.1(b)(i) or (ii), the City may terminate Operator's right of possession of the Northeast Valley Animal Shelter, and in such event, the City or the City's agents and servants may immediately or at any time thereafter re-enter the Northeast Valley Animal Shelter and remove all Persons and all or any property therefrom, by any available action under law or proceeding at law or in equity, and with or without terminating this Agreement, and repossess and enjoy the Northeast Valley Animal Shelter; *provided, however*, that no reentry by the City shall be construed as an election on its part to terminate this Agreement unless a notice of such intention is given to Operator; *provided further* that any re-entry or termination of this Agreement made in accordance with this Agreement as against Operator shall be valid and effective against Operator;

(v) the City may, subject to applicable Law, seize and hold any of Operator's goods situated on the Northeast Valley Animal Shelter and Operator waives any statutory protections and exemptions in connection therewith; and

(vi) the City may exercise any of its other rights and remedies provided for hereunder or at law or equity.

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**ARTICLE 13  
MISCELLANEOUS**

Notice. All notices and demands which may or are to be required or permitted to be given by either Party to the other hereunder shall be in writing. All notices and demands shall be personally delivered (including by means of professional messenger service), sent by United States registered or certified mail, postage prepaid, return receipt requested, or transmitted by telecopier (e.g., Fax), in which case the receiving Party shall immediately confirm receipt of such notice. All notices are effective upon receipt. For the purposes of such notices, the addresses for the parties are set forth in Section 13.2 below. Either Party may from time to time designate another Person or place in a notice.

Notices - Where Sent. All notices given under this Agreement which are mailed or telecopied shall be addressed to the respective parties as follows:

To City:

City of Los Angeles  
Brenda Barnette  
221 N. Figueroa St, 6<sup>th</sup> Floor  
Los Angeles, California 90012  
Telecopier: (213) 482-9511

*with a copy of any notice to:*

Office of the City Attorney  
-Real Property Division  
City Hall East, Room 701  
200 North Main Street  
Los Angeles, California 90012  
Telecopier: (213) 978-8090

To Operator:

Best Friend Animal Society  
Attn: Gregory Castle, CEO  
5001 Angel Canyon Road  
Kanab, UT 84741

*with a copy to:*

Best Friend Animal Society  
15321 Brand Boulevard  
Mission Hills, CA 91345

Entire Agreement. This Agreement, including all schedules and exhibits hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied, that form part of or affect this Agreement, or that induced any Party to enter into this Agreement or on which reliance is placed by any Party, except as specifically set forth in this Agreement. The Parties acknowledge and agree that (i) each has substantial business experience and is fully acquainted with the provisions of this Agreement, (ii) the provisions and language of this Agreement have been fully negotiated and (iii) no provision of this Agreement shall be construed in favor of any Party or against any Party by reason of such provision of this Agreement having been drafted on behalf of one Party rather than the other.

Agent for Service of Notice and Process. Operator shall designate an agent located within the County of Los Angeles, State of California, for service of legal process.

Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Waiver of Rights. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof. If any provision of this Agreement or the application thereof to any Person or circumstances is held or deemed to be or determined to be invalid, inoperative or unenforceable in any particular case in any particular jurisdiction or jurisdictions because it conflicts with any other provision or provisions hereof or of any applicable Law, or public policy, or for any other reason, (i) such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever, and (ii) the Parties shall negotiate in good faith to amend this Agreement to implement the provisions set forth herein.

Reservation of Mineral Rights. City hereby reserves all right, title, and interest in any and all gas, oil, minerals, and water beneath the Northeast Valley Animal Shelter.

No Partnership or Third Party Beneficiaries. Except as expressly provided herein to the contrary, nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between the City and Operator, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any Person not a Party to this Agreement.

Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

Submission to Jurisdiction. Subject to Article 11, any action or proceeding against Operator or the City relating in any way to this Agreement may be brought and enforced in the Federal Court of the Central District of California or the Superior Court of the County of Los Angeles, State of California. Operator and City hereby irrevocably submit to the jurisdiction of said courts with regard to any such action or proceeding, and irrevocably waives, to the fullest extent permitted by applicable Law, any objection it may have now or hereafter have to the laying of venue of any such action or proceeding in said court and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Service of process on the City may be made only by personal delivery on the City Clerk or Deputy City Clerk of the City with

courtesy copies sent in accordance with Sections 13.1 and 13.2. Service of process on Operator may be made either by registered or certified mail addressed as provided for in Section 13.1 or by delivery to Operator's registered agent for service of process in the State of California. If Operator is presented with a request for Documents by any administrative agency or with a *subpoena duces tecum* regarding any Documents which may be in its possession by reason of this Agreement, Operator shall give prompt notice to the City Attorney of the City. The City may contest such process by any means available to it before such Documents are submitted to a court or other third party; *provided, however*, that Operator shall not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency or required by Law, unless the *subpoena* or request is quashed or the time to produce is otherwise extended.

Further Acts. The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, each Party will, at any time and from time to time, execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the other Party in order to cure any defect in the execution and/or delivery of this Agreement.

Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs and expenses incurred in connection with performing and observing its obligations and covenants under this Agreement.

Counterparts; Facsimile Execution. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same agreement. This Agreement shall be effective when it has been executed by each Party and delivered to all Parties. To evidence the fact that it has executed this Agreement, a Party may send a copy of its executed counterpart to the other Party by facsimile transmission. Such Party shall be deemed to have executed and delivered this Agreement on the date it sent such facsimile transmission. In such event, such Party shall forthwith deliver to the other Party an original counterpart of this Agreement executed by such Party.

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IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf by the General Manager of the Department of Animal Services pursuant to due authorization of the City Council and Operator has caused this Agreement to be duly executed pursuant to due authorization by its Board. If the space provided in Section 1.1 of this Agreement is blank, such date shall be entered in such space, although such date shall be deemed to be the date of this Agreement in any case.

**CITY OF LOS ANGELES**, a municipal corporation,

By: \_\_\_\_\_  
BRENDA BARNETTE  
General Manager, Department of Animal Services

Date: \_\_\_\_\_

**BEST FRIENDS ANIMAL SOCIETY**, a tax-exempt non-profit animal welfare,

By:  
GREGORY CASTLE  
Chief Executive Officer

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**  
**MICHAEL N. FEUER**, City Attorney

**ATTEST:**  
**HOLLY L. WOLCOTT**, City Clerk

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City Business License Number \_\_\_\_\_

IRS Taxpayer Identification Number \_\_\_\_\_

City Contract Number \_\_\_\_\_