

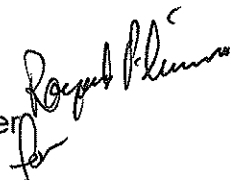
CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

0590-00098-4188

Date: August 16, 2011

To: The Council
The Mayor

From: Miguel A. Santana, City Administrative Officer

Subject: **Northeast Animal Care Center Proposal**

On August 12, 2011, the proposal submitted by Best Friends Animal Society (BFAS) to operate the Northeast Animal Care Center (Northeast) was considered in Council. The following questions were raised during the meeting:

1) How was CD7 involved in the Northeast process?

My staff and I met with Councilman Alarcon and his staff on multiple occasions throughout the Northeast process. I tried to answer questions and address concerns that were raised by the Councilman and his staff. Interactions between my staff and the Councilman's staff have been occurring on a regular basis for the past six months.

2) What was the Request for Information process?

On January 29, 2010, the Office of the City Administrative Officer (CAO) released a report titled Three-Year Plan to Fiscal Sustainability (C.F. 09-0600-S159); in this report, the CAO recommended the issuance of a Request for Information (RFI) for the operation of one or more of the City's Animal Care Centers by an established animal care and control organization. The release of the RFI was held pending the selection of a permanent General Manager for the Department of Animal Services (Department). On January 10, 2011 and after multiple discussions concerning the RFI with the Department, the CAO released a RFI for a contractor to operate one or more City Animal Care Centers. Responses to the RFI were due on February 26, 2011. The City received one response from BFAS to operate Northeast. Bond counsel reviewed the details of the BFAS proposal and provided the City with a framework for which the City could allow a non-profit to utilize the facility. The City sat down with BFAS to discuss certain issues, such as, the Trap Neuter Return (TNR) injunction, the City's operating standards, and service level commitments. After being assured that BFAS could work within bond counsel's framework and the City's structure additional information was requested from and provided by BFAS.

3) Why wasn't a Request for Proposals (RFP) released?

It is not uncommon for the City to get only one or two responses for Department related issues. A RFP for Northeast was not released for the following reasons:

a) The primary purpose of the RFI was to identify potential candidates who may respond to a RFP to provide operation of one or more existing Animal Care Centers in the City of Los Angeles. The RFI was posted on the City's Business Assistance Virtual Network (BAVN) system website, <http://www.labavn.org/bid.cfm?10871> (Attachment 1) and sent to 3,155 BAVN users. One response to the request was received. The proposal was deemed responsive and forwarded to bond counsel for review.

The CAO received a letter of interest from spcaLA on May 11, 2011 well after the deadline for the RFI. The letter proposed two management models without any of the supporting information required by the RFI. Under one management model, "the individual city performs its animal control functions, specifically, field pick-ups, licensing, dog bites, etc. but the animals are delivered directly (unless emergency medical care is needed) to the operator where they are held for the mandatory period and then disposed of by the operator." The second management model is structured so that, "the city picks up and houses the strays as usual, and after the mandatory period expires the operator removes as many as possible with the understanding that most of the capacity at that shelter is from its partner city. This model also involves both entities operating at the same location via a lease/leaseback arrangement. It is a truly unique situation that has been emulated by others, tweaked, and modified as circumstances demand." The six page letter was inconsistent with the City's goal to increase the live save rate for animals entering Los Angeles shelters. Further, this prominent agency specified that they would be interested in a long term arrangement which would preclude the City from having the option to reclaim the facility after three to five years if the economy permits.

b) Previous RFPs released by the Department for spay/neuter services did not garner a robust number of proposals either. Two proposals were received when a RFP for mobile spay/neuter services was released. When the Department solicited bids for their six spay/neuter clinics, the Department received one proposal per clinic for four of the six spay/neuter clinics. Bids that were received and would normally be thrown out as non-responsive were accepted; although the number of daily surgeries bid was below the minimum number in the RFP, the bids were accepted because some service is better than no service. Currently, the South Los Angeles, East Valley, West Los Angeles, and Harbor Care Centers have on-site spay/neuter clinics. The clinics are independently operated.

c) There are only a handful of national agencies with the financial strength to take on this unique public-private partnership because this partnership requires a substantial outside investment estimated to be in excess of one million dollars per year after net revenue.

4) Does Northeast currently operate in any capacity?

The 2011-12 Adopted Budget assumed that the City will not operate Northeast. Existing staff were transferred to the City's six other Animal Care Centers to backfill operational shortages. If the City does not enter into a management agreement with BFAS, Northeast will be closed for the foreseeable future. Northeast was turned over to the Department of General Services (GSD) effective August 9, 2011.

5) Has Northeast been vandalized?

Yes, copper piping that feeds water to the outdoor kennels was stolen. GSD's Maintenance and Facilities Section noticed that a crime was committed. They notified GSD's Office of Public Safety (OPS) who responded to the call and filed a report with the Police Department. Since the Department had vacated the property; the Department sent a Director of Field Operations to Northeast to help GSD and the Police Department access the damages. Originally, the building was included in OPS and Police Department patrol routes; after the crime was committed, OPS stationed a contract security officer at the facility 24/7.

6) What is the Hayden Bill and does it affect the proposal submitted by BFAS?

The Hayden Bill and the sections of the bill that have been suspended (not repealed) have zero impact on the Northeast proposal. The Department has for years exceeded the requirements of the Hayden Bill and is still trying to do so as part of the City's "No Kill Policy." The Northeast proposal expands the City's kennel/cage capacity beyond the Department's existing capacity. The services provided by the Department's existing 196 care center staff spread over six care centers plus the proposed services provided by BFAS are greater than the services provided by Department's existing 196 care center spread over six care centers and significantly greater than the services that would be provided if the Department's existing 196 care center were spread over seven or eight care centers.

For reference, the Hayden Bill is still in effect and it has no sunset provision. Former Governor Schwarzenegger recommended the law be repealed. The law was not repealed, the state legislature effectively "suspended" certain provisions of the bill by refusing to reimburse shelter operators for the extra expenses associated with additional holding periods. Under other state laws, unfunded mandates of this sort are not operational, so shelters only had to hold animals for three days which was the mandatory holding period prior to the Hayden Bill. Since 2009, the Department holds animals in the care centers for one day after the end of the mandatory holding period. The Hayden Bill requirements were only included in the report because Alternative Four reduces Citywide service levels provided at all care centers under a shared sacrifice model whereby staff are spread .

7) How many animals will the Northeast proposal save per year?

At least, 3,000 additional animals will be saved if the City moves forward with the Northeast contract. An average of 200-400 animals per month will be saved by moving forward with the Northeast proposal.

8) What are the Fiscal Year 2010-11 impound numbers for Northeast?

1,107 animals were processed at Northeast last fiscal year; Northeast never accepted owner surrenders at the facility, so the impounds at the facility were related to the Department's internal activities. 1,107 animals, mostly dogs and cats, however, are small in comparison to the 63,306 animals that were impounded at the six operating care centers.

9) What does the 50 animals listed in the scope of work mean?

At the time the RFI was released, there were 47 animals at Northeast. In order to create a management contract which did not transfer the burden of holding those 47 animals to the Department's six operating care centers, a threshold for the minimum number of animals to be housed on a daily basis at Northeast was established. Based on the draft contract, BFAS is required to hold, on average, a minimum of 50 animals at all times; in reality, BFAS will house between 100-150 animals most of the time. The language is intended to set the minimum number of animals that BFAS would have to house to mitigate the impact of shifting long-term holds to the City's other care centers. It also reflects the reality that BFAS will have successful adoption weekends and adoption events where a high number of animals may be adopted and it may take a day or two to replenish the inventory of animals at Northeast.

10) Why doesn't the City require BFAS to maintain Northeast at full capacity?

The draft contract allows the Department to continue to use Northeast on an as needed basis. The City reserves the right to use Northeast to house animals during emergencies, as well as, utilize the facility as a staging area for transporting animals out-of-state.

11) Why doesn't BFAS pay rent?

a) Our Office estimates that the cost incurred to operate Northeast by BFAS will exceed the revenues generated by \$1 million per year. This is based on BFAS maintaining an average of 150 animals at Northeast, placing 3,000 animals per year, and providing veterinary and spay/neuter services to City residents. In addition, the City would receive about \$60,000 in additional license revenue from the additional animals adopted out assuming BFAS handles 3,000 adoptions to City residents.

b) Notwithstanding the above, the bonds that govern Northeast do not allow for an operator to compensate the City for use of the facility. If BFAS paid rent, the amount paid could trigger private use issues which may affect the tax-exempt status of the bonds. This shelter was General Obligation bond funded (Series 2001-A, 2002-A, and 2003-A).

12) May a non-profit fulfill Northeast's public purpose?

Yes, if the services provided by the non-profit are the same/very similar to the services provided by the City and serve the purpose for which the bonds were issued, then it would not trigger private use issues.

13) Is the draft contract attached to the 8/2/2011 CAO the final version of the contract?

No, the contract is not yet final and will continue to undergo revisions based on feedback from the City Attorney's Office; the draft contract (Attachment 2) was recently updated to strengthen the TNR language.

BAVN Notifications Report

Notifications for RFI4ASD - Request for Information - Animal Care Centers were sent to 3155 BAVN users.

View this opportunity online at <http://www.labavn.org/bid.cfm?10871>

Copy of the Notification Letter:

Dear <Username inserted here>,

This is an automated notification by the City of Los Angeles' Mayor's Office of Economic Development, Business Assistance Virtual Network (BAVN) system, of a new bidding opportunity. You are receiving this message because you subscribed to BAVN notifications which alert you when related opportunities are posted online that match your company's profile.

Please do not reply to this message. If you wish to discontinue this daily update or modify your company profile, please follow the instructions at the end of this email.

"Request for Information - Animal Care Centers" was posted on 01/10/2011.

ID: 10871

Title: Request for Information - Animal Care Centers

RFP Number: RFI4ASD

Close Date: 02/26/2011

Budget: N/A

Description:

The City of Los Angeles (City) is seeking an entity to operate one or more of the City's Animal Care Centers. As an initial step, the City has issued a Request for Information (RFI) to identify potential candidates who may respond to a Request for Proposals (RFP) to operate one or more of the City's Animal Care Centers. The RFI for Animal Care Center Operation is posted on the City's website at www.labavn.org. The deadline for submission is February 26, 2011. If you are unable to access the document on the website or have additional questions or concerns, please email cao.AnimalCareRFI@lacity.org or call (213) 473-7500. We encourage you to respond if you have an interest in performing this work. We are looking forward to hearing from you.

Areas: 541940 - Veterinary Services

Department: City Administrative Officer

Contact: Jason Killeen

Tel: 213-473-7574

Email: jason.killeen@lacity.org

Meetings: May be posted later.

View this opportunity's detailed listing online at <http://www.labavn.org/bid.cfm?10871>

It is necessary to login to download the documents.

Follow the instructions below to download documents :

- Logon to <http://www.labavn.org>.

**LOS ANGELES NORTHEAST CARE CENTER
MANAGEMENT AGREEMENT**

dated as of

Month Day, Year

by and between

CITY OF LOS ANGELES

and

BEST FRIENDS ANIMAL SOCIETY

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LOS ANGELES NORTHEAST CARE CENTER MANAGEMENT AGREEMENT

THIS LOS ANGELES NORTHEAST CARE CENTER MANAGEMENT AGREEMENT (this "Agreement") is made and entered into as of the date the Office of the City Clerk attests this Agreement ("Execution Date"), between the City of Los Angeles (the "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 (the "Operator"), which is authorized to do business in the State of California, with regard to the following:

R E C I T A L S

WHEREAS, the City owns the Northeast Animal Care Center; and

WHEREAS, pursuant to a Request for Information (RFI) dated January 10, 2011, and under the terms and conditions contained in a motion adopted by the City Council of the City (the "Northeast Animal Care Center Council Action"), the City is authorized to enter into a management contract; and

WHEREAS, the Department desires the Operator to provide animal welfare services and spay/neuter surgeries at the Northeast Animal Care Center ("Care Center"); and

WHEREAS, the Operator desires to operate the Care Center for the City to provide Animal Welfare Services as hereinafter provided; and

WHEREAS, the City desires to grant the Operator the right to provide Animal Welfare Services to the public in connection to the Care Center as hereinafter provided; and

WHEREAS, the Operator will provide animal welfare services, veterinary care, and spay/neuter services for Care Center cats and dogs that are adopted from the Care Center, as well as, to pets owned by qualifying residents in the Los Angeles area; and

WHEREAS, operating the Care Center will augment the Department's ability to provide animal welfare services and spay/neuter services to adopters and residents in Los Angeles and will benefit the public; and

WHEREAS, the 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 the Care Center will be operated, and that Animal Welfare Services will be provided in a manner that benefits the public and fulfills the public purposes of the Care Center and as such public benefits and public purposes will be preserved.

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

ARTICLE 1 BASIC PROVISIONS

Section 1.1. Date and Parties. This Agreement is dated, for reference purposes only, August 12, 2011, and is between City and the 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.

Section 1.2. 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 Animal Care Center, reviewing and issuing permits, and all other legislative, administrative, or enforcement functions of the City pursuant to federal, state, or local law.

Section 1.3. Execution Date. The phrase "Execution Date" shall mean the date the Office of the City Clerk of Los Angeles attests this Agreement on page __, 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 date of this Agreement shall also be the Execution Date.

Section 1.4. Term. The term of this Agreement shall be three (3) years, and may be renewed for up to two (2) 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.

Section 1.5. 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

Section 2.1. Definitions. Unless otherwise specified or the context otherwise requires, 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.

"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.

"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 Animal Care Center, the Northeast Animal Care Center 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 Animal Care Center Operations.

"Board" means the Board of Animal 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.

"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 the Operator, to the extent permitted hereby, to (i) add or perform work in respect of the Northeast Animal Care Center 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 Animal Care Center or the Northeast Animal Care Center Operations; *provided, however*, that no such order or directive may in any event order or direct the Operator to do any act that could reasonably be expected to violate any applicable Law or cause the 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 Animal Care Center (or subcontracts thereunder).

“Contractor” means, with respect to a Person, any contractor with whom such Person contracts to perform work or supply materials or labor in relation to the Northeast Animal Care Center, including any subcontractor of any tier, supplier or materialman directly or indirectly employed pursuant to a subcontract with a Contractor. For the avoidance of doubt, the Operator shall be a Contractor of 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.

“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 soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

“Environmental Laws” means any Laws applicable to the Northeast Animal Care Center 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 Animal Care Center, 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 Animal Care Center, (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 Animal Care Center, the Operator or any of its Representatives in connection with the Northeast Animal Care Center and (iii) proper, complete and accurate books, records, accounts and documents of the Operator relating to the Northeast Animal Care Center, 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.

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

“Operating Standards” means (i) the standards, specifications, policies, procedures and processes that apply to the operation, maintenance, and capital improvements to, the Northeast Animal Care Center set forth on Schedule X, including any plans submitted by the Operator to the City as required therein. To the extent that any term or provision set forth in Schedule X or incorporated by reference in Schedule X 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 Animal Care Center prepared by or on behalf of the Operator and addressed to the City seeking to make a fundamental change in the dimensions, character, quality or location of any part of the Northeast Animal Care Center; *provided, however*, that a Operator Request need not be submitted in connection with operations, maintenance, repair or overhaul of the Northeast Animal Care Center in the ordinary course or any other aspects of Northeast Animal Care Center Operations permitted or reserved to the Operator under this Agreement, including any modification or change to the Operating Standards pursuant to Section 5.1(a).

“Northeast Animal Care Center Assets” means the personal property of the City used in connection with operations at the Northeast Animal Care Center set forth on Schedule X.

“Northeast Animal Care Center Operations” means (i) the operation, management, maintenance and repair of the Northeast Animal Care Center and (ii) all other actions relating to the Northeast Animal Care Center that are performed by or on behalf of the Operator pursuant to this Agreement.

“Northeast Animal Care Center 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 Coverages” 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 Animal Care Center, and the regulation of traffic, traffic control and the use of the public way.

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

“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.

“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.

Section 2.2. Number and Gender. In this Agreement words in the singular include the plural and vice versa and words in one gender include all genders.

Section 2.3. 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.

Section 2.4. 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.

Section 2.5. 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.

Section 2.6. 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.

Section 2.7. 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).

Section 2.8. 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.

Section 2.9. 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.

Section 2.10. 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.

Section 2.11. 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) 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 the Operator requesting an approval or consent, advise the 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 the 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 2.12.

Section 2.12. 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

Section 3.1. Quiet Enjoyment.

(a) *Quiet Enjoyment.* The City agrees that, the Operator shall, at all times during the Term, be entitled to and shall have the quiet possession and enjoyment of the Northeast Animal Care Center and the rights and privileges granted to the Operator hereunder, subject to (i) the Reserved Powers, (ii) the City's remedies upon a Operator Default, and (iii) the provisions contained in this Agreement. The City and the Operator acknowledge that the Operator's rights to use the Northeast Animal Care Center as a public animal care center and charge fees, in accordance with the terms of this Agreement, to monitor compliance with this Agreement to ensure that the Northeast Animal Care Center is used and operated as required by this Agreement. Unless expressly so stated in writing by the City, any entry by the City, or any of its Representatives onto the Northeast Animal Care Center required or permitted under this Agreement shall not constitute a reentry, trespass or a breach of the covenant for quiet enjoyment contained in this Agreement. The City shall, at all times during the Term, defend its title to the Northeast Animal Care Center, the rights granted to the Operator hereunder, or any portion thereof, against any Person claiming any interest adverse to the City or the Operator in the Northeast Animal Care Center, or any portion thereof, except where such adverse interest arises as a result of the act, omission, negligence, misconduct or violation of Law of the Operator, its Affiliates or their respective Representatives.

Section 3.2. Northeast Animal Care Center Operations.

(a) *Use.* Except as otherwise specifically provided herein, including without limitations the public purpose requirements of Section 3.16, the Operator shall, at all times during the Term, (i) be responsible for all aspects of the Northeast Animal Care Center Operations; and (ii) cause the Northeast Animal Care Center Operations to be performed in accordance with the provisions of this Agreement and applicable Law (*provided, however*, that the Operator may contest the application of any Law by appropriate proceedings). The Operator shall, at all times during the Term, cause the Northeast Animal Care Center to be open and operational in accordance with the Operating Standards, for use by the public for Animal Welfare Purposes, except as required by applicable Law, as necessary to comply with any other requirement of this Agreement (including closures related to the performance of maintenance or repair activities as required by the Operating Standards) or as necessary for temporary closures required to address emergencies, public safety or temporary events.

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

(c) *Scope of Services.* The Operator shall be the sole operator of the Northeast Animal Care Center and shall operate the Northeast Animal Care Center according to all federal, state, and local laws; shall provide spay/neuter services for all adopted animals and animals owned by members of the public, and related veterinary medical services; shall provide all staffing, equipment, and supplies; shall obtain all permits, licenses, and registrations required to

operate the Northeast Animal Care Center; and shall coordinate with Department staff to provide these services, as more fully described in **Attachment C**:

1. Primary Function - On-site adoptions and monthly adoption events
 - Animals at the Northeast Animal Care Center will remain the legal property of the City.
 - On average a combined 50 dogs and cats will be housed and cared for at the Northeast Animal Care Center by Operator.
 - Operator will be the adoption facilitator providing animal care, training, grooming and marketing to find the animals homes.
 - Animal Services will be paid a set adoption fee per animal.
 - Operator will remit the \$20 dog license fee to the City for all dogs adopted at the Northeast Animal Care Center.
 - Operator may have animal supplies on-site for sale at the Northeast Animal Care Center that adopters will need to transition their animal into their home.
2. Secondary Function - Low cost spay/neuter surgeries, vaccinations, and medical care
 - Surgical Sterilization
 - a. Cats and dogs available for adoption in the Northeast Animal Care Center.
 - b. Cats and dogs owned by the public.
 - c. Trap, Neuter, and Release (TNR) surgeries will not be performed at the Northeast Animal Care Center.
 - Emergency Medical Treatment.
 - Care and Release of the Animals.
 - Wellness and Vaccine Clinics.
3. Tertiary Function - Educational, outreach, and development programs
 - Special Events:
 - a. Adoption Events.
 - b. Health/Wellness Clinics.
 - Free Public Education Classes.
 - Dog Training Classes:
 - a. Cost of the classes will range between free and \$40/class.
 - b. Class sizes will be limited to a size that can be appropriately controlled by a dog trainer.
 - c. Animals enrolled in classes will be required to be current on vaccinations.

(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 provide adoption services a minimum of 24 hours per week and spay and neuter services for 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 the Operator's veterinarian will be absent, Operator may retain the temporary services of a licensed veterinarian to perform necessary surgeries in the absence of the 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 the Operator's veterinarian is absent.

(f) *Equipment and Supplies.* Operator shall obtain, at its own expense, all equipment and supplies to be used in the operation of the Northeast Animal Care Center, 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 Animal Care Center, 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 the 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 Animal Care Center. 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 Operator's sole responsibility.

Section 3.3. Maintenance and Repair.

(a) *Maintenance and Security.* The Department of General Services shall maintain in good order, condition, and repair the Northeast Animal Care Center 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, the Department of General Services agrees to maintain and repair, at the Department of General Services' sole cost and expense, all of the Department of General Services improvements at the Northeast Animal Care Center. The Operator may not change the locks without the prior written consent of the Department of General Services, which consent shall be in the Department of General Services' sole and absolute discretion, and which consent shall require that the Department of General Services and the Department be provided with a complete set of all new keys.

(b) *Janitorial.* The Operator shall be responsible for providing and paying for its own janitorial/cleaning/housekeeping services and trash collection. The Operator shall keep clean the Northeast Animal Care Center 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 Animal Care Center in good working order as stipulated in Section 6.1, the Department of General Services shall have no further obligation to repair, remodel, replace, and/or reconstruct any improvement at the Northeast Animal Care Center. In the event the PREMISES become unusable for the purposes provided herein, the Department of General Services, the Department and the Operator agrees they shall meet and discuss necessary repairs or remodeling to restore the Northeast Animal Care Center to a usable condition. If no agreement can be reached however, the 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 the 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 Animal Care Center 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 Animal Care Center 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 Animal Care Center'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.

Section 3.4. No Encumbrances. The Operator shall not do any act or thing that will create any Encumbrance against the Northeast Animal Care Center and shall promptly remove any Encumbrance against the Northeast Animal Care Center, 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 the 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.

Section 3.5. Rights of the City to Access and Perform Work on the Northeast Animal Care Center.

- (a) *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 Animal Care Center 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 Animal Care Center 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 Animal Care Center and perform any work therein pursuant to Section 13.1(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 Animal Care Center and if the 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 Center, 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 Center;
 - (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 Animal Care Center (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 Animal Care Center for the benefit of suppliers or owners of any such utilities or services and (C) use the Northeast Animal Care Center 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 Animal Care Center 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 the Operator for such access and the City shall use reasonable efforts to minimize interference with the Northeast Animal Care Center Operations in connection with any entry on the Northeast Animal Care Center pursuant to this Section 3.4(a).

(b) *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 Animal Care Center and to make or perform any repairs, alterations, Restoration or other work in, to, above, or about the Northeast Animal Care Center which is the 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 the Operator or any other Person for the failure to do so or (iii) relieve the 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 the 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 the Operator's default in failing to perform the same.

Section 3.6. Payment of Taxes. The 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 Animal Care Center, including any Taxes imposed on customers of the Northeast Animal Care Center as required by the applicable Law.

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. The Operator shall pay when due all charges (including all applicable Taxes and fees) for telephone and other utilities and services used in the Northeast Animal Care Center Operations or supplied to the Northeast Animal Care Center during the Term. Upon request of the City, the 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 the Operator in accordance with this Section 3.7. The City shall pay when due all charges (including all applicable Taxes and fees) for gas, electricity, and water supplied to the Northeast Animal Care Center during the Term. 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 the Operator's use of the Northeast Animal Care Center, or render the City liable to the Operator for damages or relieve the Operator from performance of the Operator's obligations under this Agreement.

Section 3.9. Notices of Defaults and Claims. The Operator shall promptly give notice to the City (i) if the 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 Animal Care Center or the City or the Northeast Animal Care Center Operations (whether or not such claim, proceeding or litigation is covered by insurance) of which the Operator is aware (other than as a result of a notice to the Operator from the City). The 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.* The Operator shall not have the right to sell, lease, or license any naming rights for the Northeast Animal Care Center. The City reserves the right at its sole discretion to change the names, logos, or marks for the Northeast Animal Care Center and Operator shall have the right to use, and shall use, such names, logos, or marks for the Northeast Animal Care Center, without charge under this provision.

(b) *Advertisements.* The Operator shall have the right to provide advertising space in and about the Center *provided* that all advertisements shall comply with (i) the advertising policy of the City and (ii) shall be subject to the Approval of the City.

Section 3.11. Police, Fire, Emergency and Public Safety Access Rights. At all times during the Term and without notice to the 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 Animal Care Center; (ii) the City shall have access, as required by the City, to the Northeast Animal Care Center as necessary for the protection of public safety; *provided, however*, that inspections by the City for purposes of determining whether or not the 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 Animal Care Center shall have access to the Northeast Animal Care Center as necessary for emergency management and homeland security purposes, including the prevention of or response to a public safety emergency.

Section 3.12. Payments by the City. The Operator acknowledges and agrees that if the City is required under applicable Law of general application to withhold a portion of any payment that the City is obligated to make to the Operator under this Agreement, the City will be deemed to have satisfied such payment obligation to the Operator to the extent of such withholding by the City.

Section 3.13. Operating Standards – Operator Changes. If the Operator, at its cost and expense, wishes to implement and use operating standards other than the Operating Standards adopted in this Agreement, the Operator must provide notice of such proposed operating standards to the City for Approval. The Operator's proposed operating standards must be accompanied by an explanation of the 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 the 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 the 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 the Operator's proposed operating standards, the Operator shall not implement the proposed operating standards and shall implement and comply with the Operating Standards. The Operator's proposed operating standards shall be deemed incorporated into the Operating Standards upon Approval by the City in accordance with the terms hereof.

Section 3.14. 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 the Operator to (i) comply with any new Law applicable to the Northeast Animal Care Center Operations or (ii) conform the Operating Standards to standards or practices generally adopted with respect to City Animal Care Centers. 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 and shall comply with all such modifications and changes and in no event shall the Operator be excused from compliance with any such modification or change. For the avoidance of doubt, the Operator will have the right to challenge any modified Operating Standard pursuant to Article 12 on the basis that it does not meet either of the requirements set forth above.

Section 3.15. Public Purpose Requirements.

(a) 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 Animal Care Center 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.

(b) In order to assure that the Northeast Animal Care Center continues to operate in a manner that benefits the public and fulfills the public purposes set forth in Section 3.14(a), the Northeast Animal Care Center shall be operated consistent with Schedule X.

Section 3.16. Leases, Covenants and Easements. Operator must comply with the provisions of all leases, covenants and easements on the Center and in case of any conflict between the provisions of this Agreement and the leases, covenants and easements on any of the Center, the provisions of the leases, covenants and easements will control.

ARTICLE 4 MODIFICATIONS

Section 4.1. Operator Requests. If the 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 Animal Care Center, then the Operator may submit to the City, for Approval, a 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 are non-structural in nature shall not be considered "fundamental changes." The Operator shall be responsible for all amounts required to implement an Approved Operator Request (and any Losses incurred in connection therewith). No Operator Request shall be implemented unless and until such Operator Request has been Approved by the City.

Section 4.2. Performance of Modifications. Subject to the other provisions of this Article 4, the Operator shall ensure that Approved Operator Requests are performed in a good and workmanlike manner and diligently complied with and implemented in such manner that the costs and delays relating thereto are minimized.

ARTICLE 5 ALTERATIONS AND IMPROVEMENTS

Section 5.1. Alterations and Improvements.

(a) *City Approval.* With the prior written approval of City, Operator may make alterations and improvements to the Center ("Alterations") which do not affect the (i) exterior appearance of the Center, or (ii) structural aspects of the Center, 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 thirty (30) days' notice to City, Alterations which (i) do not require any structural or any substantial modification to the Center, (ii) do not affect the Structure Systems, (iii) do not affect the exterior appearance of the Center, and (iv) do not cost in excess of Fifty Thousand Dollars (\$50,000), Adjusted for Inflation from the Closing Date.

(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 Center, 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 Center in whole or in part; *provided, however*, that such equipment, facilities, and systems which serve solely the Center 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 Center or about the Center, 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 Center. 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 Center, from time to time, shall be at the sole cost of Operator, and any Alterations, fixtures, and equipment remaining at the Center after the vacation of the Premises by Operator shall be deemed abandoned and become the property of City. *Provided, however,* if City, as a condition to City's consent to any Alteration, requires that Operator remove any Alteration upon the expiration or early termination of the Term, then unless City agrees in writing otherwise, Operator must remove at Operator's expense such Alterations and to repair any damage to the Center 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.

(g) *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 Center, which claims made against City and/or purport to be secured by any mechanic's or materialmen's lien against the Center, 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 Center, 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 Animal Care Center 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.

(h) *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 Center, 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 Center.

(i) *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.

ARTICLE 6 FEES; REVENUES

Section 6.1. Fee Revenues. The Operator shall, at all times during the Term, (i) have the right to establish, collect and enforce payment of fees with respect to the Northeast Animal Care Center in accordance with the provisions of Article 6 of this Agreement and (ii) have the right, title, entitlement and interest in all Fees charged by or on behalf of the Operator in respect to the use of the Northeast Animal Care Center during the Term. For the Term of this Agreement the Fees shall not exceed the rates set forth in Schedule X (Maximum Fees) Adjusted for Inflation from the Closing Date. All fees, including license fees and any adoption fees collected by Operator on behalf of the City shall be held in trust until remitted to and accepted by City.

Section 6.2. Fee Rate Notices. The Operator shall provide to the City, no later than the end of each fiscal year, notice of the rates and rate types charged by the Operator for services provided at the Northeast Animal Care Center. Such notice shall include the rates and rate types charged during the prior fiscal year and expected to be charged during the next fiscal year. Such notice shall be provided by the Operator to the City solely for informational purposes and, consistent with and to the extent permitted by this Article 6 and Schedule X, such rates may be changed at any time and from time to time by the Operator without notice to the City. Consistent with and to the extent permitted by this Article 6 and Schedule X, Operator may charge different types of rates as it determines are appropriate in its discretion, including variable rates, weekday, weekend and special event rates and discounts to be determined by the Operator.

ARTICLE 7 REPORTING; AUDITS; INSPECTIONS

Section 7.1. Reports.

(a) *Incident Management and Notifications.* The 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 Animal Care Center, and of all claims in excess of \$50,000 made by or against the Operator, or potential claims in excess of \$50,000 that the Operator reasonably expects to make against, or to be made against it by, third parties.

(b) *Environmental Incident Management and Notifications.* The Operator shall provide notice to the City within 24 hours following the Operator's 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 Animal Care Center 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, the Operator shall deliver to the City (i) within 130 days of the end of each calendar Year, a copy of audited financial statements of Best Friends Animal Society, 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.

Section 7.2. Information.

(a) *Furnish Information.* At the request of the City, the Operator shall, at the Operator's cost and expense 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 Animal Care Center Operations, this Agreement or the Northeast Animal Care Center as may be specified in such request and as shall be in the possession or control of the Operator or its Representatives, and (ii) permit the City, after giving 10 Business Days' prior notice to the 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 discuss the obligations of the Operator under this Agreement with any of the directors, officers, employees or managers of the Operator, the Operator or their respective Representatives (it being agreed that the Operator shall have the right to be present during any such discussions with the Operator or Representatives of the Operator), for the purpose of enabling the City to determine whether the 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 the 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.

(b) *Confidentiality.* Unless disclosure is required by applicable Law, the City shall keep confidential any Information obtained from the Operator or its Representatives that (i) pursuant to the California Public Records Act, California Government Code, 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 and (ii) is designated as such by the Operator in writing to the City; *provided, however*, that the City shall have the right to determine, in its reasonable discretion, whether the California Public Records Act applies to any such Information; *provided further* that in the event the City determines that the California Public Records Act does not apply to any such Information, the City shall provide reasonable notice to, and shall consult with, the 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 the City determines 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.

Section 7.3. Inspection, Audit and Review Rights of the City.

(a) *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 the Operator under this Agreement in connection with the performance of the Northeast Animal Care Center 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). The Operator, at the cost and expense of the 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.

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

(c) *Tests.* The City and its Representatives shall, with the prior consent of the 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 Care Center or the Northeast Animal Care Center Operations as the City may reasonably determine to be necessary in the circumstances and the Operator, at the cost and expense of the Operator, 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.

(d) *No Waiver.* Failure by the City or its Representatives to inspect, review, test or Audit the 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 the 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.

(e) *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 Animal Care Center Operations or the 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.

Section 7.4. 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 the Operator or its Representatives or to the City or its Representatives performing an Audit or inspecting, testing, reviewing or examining the Northeast Animal Care Center, the Northeast Animal Care Center 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 the 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

Section 8.1. Compliance with Laws. The Operator must at all times at its own cost and expense observe and comply, in all material respects, and cause the Northeast Animal Care Center Operations to observe and comply, in all material respects, with all applicable Laws now existing or later in effect that are applicable to it or such Northeast Animal Care Center 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 Animal Care Center and those Laws expressly enumerated in this Article 8. The Operator must notify the City within seven days after receiving notice from a Governmental Authority that the Operator may have violated any Laws as described above.

Section 8.2.

Non-Discrimination.

(a) *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 Animal Care Center or any operations or activities conducted on the Northeast Animal Care Center nor shall Operator or any person claiming under or through Operator establish or permit any such practice or practices of discrimination or segregation.

(b) *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.

(c) *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.

(d) *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"). 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.

(e) *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.

(f) *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.

(g) *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 10.10.1 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 16.1).

(h) *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 initial wage rate, as adjusted each year (July 1, 2009, levels: \$10.30 per hour with health benefits of at least \$1.25 per hour or otherwise \$11.55 per hour). 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.

(i) *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.

(j) *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 15.1 of this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

(k) *Tax Registration Certificates and Tax Payments.* This Section 11.2(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.

(l) *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.

(m) *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 Care Center 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).

(n) *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

(o) The 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.

(p) 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.

(q) If the 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.

(r) Consistent with the restrictions in the Injunction, Operator is prohibited from and shall not engage in any form of Trap, Neuter, Return (TNR) for feral cats at the Northeast Animal Care Center. Operator shall not disseminate TNR information from Northeast Animal Care Center nor have a link on any Northeast Animal Care Center website to TNR information or groups. Operator shall not move feral cats to other locations for TNR purposes, nor knowingly release feral cats from the Northeast Animal Care Center to TNR groups or individuals for release or return into colonies, nor develop or distribute TNR literature from or associated with the Northeast Animal Care Center nor refer complaints about feral cats to TNR groups or individuals who engage in TNR.

ARTICLE 9 INDEMNIFICATION

Section 9.1. 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 attorney's fees and cost of litigation, damage or liability of any nature whatsoever, that may arise out of or in connection with this Agreement or the use of the Northeast Animal Care Center by Operator, its agents, employees, customers, or any other person using or attending any project or program 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 attorney's fees and cost of litigation, damage or liability arising out of any violation by Operator of the Injunction, and City shall have the right to select counsel to provide the City's defense in such action. This Section 9.1(a) does not apply to claims or liabilities involving Hazardous Materials which are covered under this Agreement.

Section 9.2. Indemnification by the City. The City shall defend, indemnify and hold harmless the Operator and each of its Representatives from and against any Losses actually suffered or incurred by the Operator or any such Representative, based upon, arising out of, occasioned by or attributable to (i) 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.

Section 9.3. Agency for Representatives. Each of the City and the 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 the Operator may enforce an indemnity in favor of its Representatives on behalf of that Representative.

Section 9.4. 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.

Section 9.5. 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.

Section 9.6. 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.

Section 9.7. 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.

Section 9.8. 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.

Section 9.9. 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.

Section 9.10.

Offset Rights; Limitations on Certain Damages.

(a) 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.

(b) 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).

Section 9.11. 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

Section 10.1. Insurance Coverage Required. The Operator shall provide and maintain at the Operator's own expense, or cause to be maintained, during the Term and during any time period following expiration if the Operator is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring the Northeast Animal Care Center and all Northeast Animal Care Center Operations (the "Required Coverages").

Section 10.2. 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.

Section 10.3. 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.

Section 10.4. Builder's Risk Insurance. When Operator undertakes any construction, maintenance or repairs to the Northeast Animal Care Center, 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.

Section 10.5. 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.

Section 10.6. 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.

Section 10.7. 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 Animal Care Center 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, other personal property, fixtures or Operator improvements or obtain business interruption insurance.

Section 10.8. Notice of Change in Insurance. All insurance policies required under this Agreement shall expressly provide that such insurance shall not be canceled 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.

Section 10.9. 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 Animal Care Center and the Operator shall have no right to possess or control the Northeast Animal Care Center or the operations conducted therein. If the Operator does not vacate, City may utilize any and all court proceedings to obtain a right to possession.

Section 10.10. 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 the Operator is

maintaining customary and reasonable insurance amounts and types during the Term of the Agreement.

Section 10.11. 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.

Section 10.12. 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.

Section 10.13. Contribution Not Required. Operator's insurance shall be primary and will not require contribution or shall be endorsed to effect these provisions.

Section 10.14. 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.

Section 10.15. 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.

Section 10.16. Evidence of Insurance. Electronic submission via Track4LA®, the City's online insurance compliance system (<http://track4la.lacity.org>), is the preferred method for submitting evidence of insurance. Track4LA® 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 builder's risk policies. An endorsement naming the City as Loss Payee as its Interest may appear is required on all property coverages. Alternatively, the 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

Section 11.1. Scope. Any dispute arising out of, relating to, or in connection with this Agreement shall be resolved as set forth in this Article 11.

Section 11.2. 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.

Section 11.3. 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 before resorting to judicial reference of the dispute for a binding decision, as provided by Section 11.4.

Section 11.4. Judicial Reference of Disputes. All controversy arising out of this Agreement shall be heard by a referee pursuant to the provisions of the California Code of Civil Procedure Section 638, *et seq.* The parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed, pursuant to Sections 638 *et seq.* of the California Code of Civil Procedure. The cost of such proceeding shall initially be borne equally by the parties. However, the prevailing party shall be entitled, in addition to all other costs, to the costs of the reference as an item of recoverable costs.

Section 11.5. 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

Section 12.1. Default by the Operator.

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

- (i) if the Operator knowingly engages in any form of Trap, Neuter, Return as part of the operation of the Northeast Animal Care Center which violates the Injunction forbidding the City from engaging in Trap, Neuter, Return activities; or
- (ii) if the 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 the Operator or for such longer period as may be reasonably necessary to cure such failure, provided, in the latter case, that the 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 the 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 the Operator or of all or any substantial part of its properties or of the Northeast Animal Care Center or any interest therein, or (D) takes any corporate action in furtherance of any action described in this Section 12.1(a)(ii);

(b) *Remedies of the City Upon Operator Default.* Upon the occurrence of a Operator Default, the City may, by notice to the Operator in accordance with the terms hereof, declare the 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 the 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 the Operator of such monies, and any amount so paid by the City shall be payable by the 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 a 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 the Operator's right of possession of the Northeast Animal Care Center, and in such event, the City or the City's agents and servants may immediately or at any time thereafter re-enter the Northeast Animal Care Center 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 Animal Care Center; *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 the Operator; *provided further* that any re-entry or termination of this Agreement made in accordance with this Agreement as against the Operator shall be valid and effective against the Operator;

- (v) the City may, subject to applicable Law, distrain against any of the Operator's goods situated on the Northeast Animal Care Center and the 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.

ARTICLE 13 MISCELLANEOUS

Section 13.1. **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.

Section 13.2. **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
City Administrative Officer
200 North Main Street, 15th Floor
Los Angeles, California 90012
Telecopier: (213) 473-7540

with a copy of any notice to:

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

To Operator:

with a copy to:

Section 13.3. **Entire Agreement.** This Agreement 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.

Section 13.4. Agent for Service of Notice and Process. If neither California legal entities nor licensed to do business in the State of California, the Operator shall designate an agent located within the County of Los Angeles, State of California, for service of legal process.

Section 13.5. Amendment. This Agreement may be amended, changed or supplemented only by a written agreement signed by the Parties.

Section 13.6. 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.

Section 13.7. 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.

Section 13.8. Reservation of Mineral Rights. City hereby reserves all right, title, and interest in any and all gas, oil, minerals, and water beneath the Northeast Animal Care Center.

Section 13.9. 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 the 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.

Section 13.10. Governing Law. This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

Section 13.11. Submission to Jurisdiction. Subject to Article 11, any action or proceeding against the 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 and each of the Operator and the City hereby irrevocably submits 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 the Operator may be made either by registered or certified mail addressed as provided for in Section 13.1 or by delivery to the Operator's registered agent for service of process in the State of California. If the 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, the 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 the 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.

Section 13.12. 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.

Section 13.13. 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.

Section 13.14. 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.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed on its behalf by its Mayor pursuant to due authorization of the City Council and the Operator has caused this Agreement to be duly executed pursuant to due authorization. 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: _____
ANTONIO R. VILLARAIGOSA
Mayor

DATE:

[OPERATOR]

By: _____
[NAME]
[TITLE]

By: _____
[NAME]
[TITLE]

DATE:

APPROVED AS TO FORM:

CARMEN A. TRUTANICH, City Attorney

By: _____
Dov S. Lesel, Assistant City Attorney

DATE:

ATTEST:

JUNE LAGMAY, City Clerk

By: _____
Deputy

DATE

DRAFT