

AGREEMENT OF LEASE AND SERVICES BETWEEN BROWARD COUNTY AND

This Agreement of Lease and Services (“Agreement”) is entered into between Broward County, a political subdivision of the State of Florida (“County”), whose address is Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301 and _____, a Florida not-for-profit corporation (“Lessee”), whose address is _____. County and Lessee are individually referred to as a “Party” and collectively referred to as the “Parties.” This Agreement is effective as of the date it is executed by both Parties (“Effective Date”).

RECITALS

- A. County is the owner of the Property, as more particularly described in **Exhibit A** of this Agreement.
- B. Pursuant to Section 125.38, Florida Statutes, County may, with approval of its Board of County Commissioners, lease the Property to a not-for-profit organization for the purpose of promoting community interest and welfare.
- C. County desires to lease to Lessee, and Lessee desires to lease from County, the Property in accordance with the terms of this Agreement for the operation of an animal shelter, including, but not limited to, animal fostering, adoptions, and out-of-state transportation to partner shelters for purposes of assisting County attain and sustain a No-Kill status.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Applicable Laws.** All laws, codes, advisory circulars, rules, regulations, ordinances, and resolutions of any governmental or quasi-governmental entity relating to the Property, the Premises, or activities at the Property or the Premises, that have been or may hereinafter be adopted, including, but not limited to, all applicable federal, state, County, and local, quasi-governmental agency laws, codes, advisory circulars, rules, regulations, ordinances, resolutions, development orders.
- 1.2 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.3 **Contract Administrator.** The Director of the Broward County Animal Care and Adoption Division.

- 1.4 **County Administrator.** The administrative head of Broward County appointed by the Board.
- 1.5 **County Attorney.** The chief legal counsel for County appointed by the Board.
- 1.6 **Day(s).** Calendar days, not business days, unless otherwise specified in the Agreement.
- 1.7 **Lessee's Parties.** The officers, agents, contractors, subcontractors, and vendors of Lessee, and all their employees, and all invitees of Lessee.
- 1.8 **Property.** The parcel of land located at 3100 NW 19th Terrace, Pompano Beach, Florida 33064, known as the Broward County Pompano Beach Animal Shelter, more particularly described in **Exhibit A**, attached hereto and made a part hereof, subject to rights-of-way and all other property interests of record.

ARTICLE 2. LEASE

- 2.1 **Lease.** Subject to the terms in this Agreement, County leases to Lessee the building and adjacent land on the Property, together with all improvements now or hereafter constructed on the Property (the "Premises"). The Premises shall be used solely for the purposes authorized in Article 6 and for no other purposes. The use of the Premises shall be subject to Applicable Laws.
- 2.2 **Condition and Use of the Premises.** County makes no representations or warranties whatsoever as to: (a) the condition of the Premises; (b) whether the Premises, or any part thereof, are in compliance with Applicable Laws; (c) any permitted or available use of the Premises. County makes no representations or warranties regarding the legality, permissibility, suitability, or availability of any use of the Premises that may be contemplated by Lessee. Lessee specifically obligates itself to conduct its own due diligence investigation as to the Premises and the suitability thereof for Lessee's purposes. Lessee shall, at its own cost and expense, obtain all permits and licenses necessary for Lessee's use of the Premises. In the event of any conflict between these provisions and any other provisions of this Agreement, the provisions of this section shall control.

ARTICLE 3. OPERATIONS

- 3.1. **Scope of Services.** Lessee will perform the services outlined in **Exhibit B** of this Agreement. The Scope of Services is a description of Lessee's obligations and responsibilities and includes preliminary considerations, prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render Lessee's performance impractical,

illogical, or unconscionable. Performance of the services outlined in **Exhibit B** is an integral part of this Agreement.

- 3.2. **Reporting.** Beginning six (6) months from the Effective Date and every six (6) months thereafter during the Term (as defined in Section 4.1), Lessee shall provide County with progress reports, which shall indicate the status of the benchmarks outlined in **Exhibit B**.

ARTICLE 4. TERM AND TERMINATION

- 4.1. **Term.** The term of this Agreement shall be for one (1) year commencing on the date on the Effective Date, unless otherwise terminated earlier as provided in this Agreement (the "Initial Term"). This Agreement may be renewed upon the same terms and conditions. Subject to written approval by the County, acting through its Contract Administrator, this Agreement may be renewed upon the same terms and conditions for up to three (3) one (1) year successive terms (the "Renewal Terms"). Each Renewal Term option shall be exercised by Lessee at least thirty (30) days, but no more than sixty (60) days, before the expiration of the then-current term. The Initial Term and any Renewal Terms are collectively referred to in this Lease as the "Term."
- 4.2. **Termination.** This Agreement may be terminated at any time by County, acting through its County Administrator, with or without cause, upon thirty (30) days' prior written notice to Lessee. Additionally, in the event the County Administrator determines it is necessary to protect the public health, safety, or welfare, this Agreement may be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances, which shall be followed by a written "Notice of Termination" to Lessee. Termination of this Agreement shall not relieve Lessee of any liabilities or obligations under this Agreement that have accrued on or prior to the effective date of termination or that survive termination of this Agreement.
- 4.3. Upon expiration or early termination of this Agreement, Lessee shall immediately cease all operations on the Premises and shall vacate and peacefully surrender the Premises to County in accordance with the terms and conditions set forth in Article 17.

ARTICLE 5. RENT, FEES, AND OTHER CHARGES, SECURITY DEPOSIT

- 5.1 **Rent.** Rent shall commence on the Effective Date. The rental payment for the Premises is One Dollar (\$1.00) per year, plus applicable taxes thereon. Rent shall be due and payable, without billing, set-off, or deduction.
- 5.2 **Licenses, Fees, and Taxes.** Lessee shall timely pay all federal, state, County, and local taxes and fees, and all special assessments of any kind, that are now or may hereafter be levied upon the Premises (including all Improvements, as defined

in Section 24.1), the leasehold estate granted by this Agreement, the business conducted on the Premises, any of Lessee's property used in connection therewith, and upon any rents or other sums payable hereunder, including, but not limited to any ad valorem taxes attributable to the Premises, sales or excise taxes on rents, and personal property taxes against Lessee's tangible and intangible personal property. Lessee shall maintain in full force and effect all federal, state, county and local licenses, local business taxes, and permits required for Lessee's business operation.

- 5.3 **Additional Rent and Charges.** If County is required or elects to pay any sum or incur any obligation or expense by reason of the failure, neglect, or refusal of Lessee to perform or fulfill any of the conditions, covenants, or requirements contained in this Agreement, or as a result of any act or omission of Lessee, or if Lessee fails to pay any obligation arising under this Agreement, Lessee shall pay to County the sum paid or the expense incurred by County, including all costs, damages, penalties, and interest at the rate of eighteen percent (18%) per annum from the date paid by County or due from Lessee until the date paid by Lessee ("Additional Payment Obligation"). The Additional Payment Obligation will become additional rent, subject to all applicable taxes, and recoverable by County in the same manner and with like remedies as if it were originally a part of the rent due and owing pursuant to this Agreement. Lessee shall pay the Additional Payment Obligation in the next installment of rent following a written notice of demand. In the event that no further rent payments are due, Lessee shall pay the Additional Payment Obligation within fifteen (15) days after County's written demand.
- 5.4 **Late Payments – Interest.** County shall be entitled to collect interest at the rate of eighteen percent (18%) per annum from the date due until the date paid for any amounts payable under this Agreement. The right of County to require payment of interest and the obligation of Lessee to pay interest to County shall be in addition to, and not in lieu of, the right of County to enforce any other remedy provided in this Agreement or under applicable law.
- 5.5 **Dishonored Check or Draft.** In the event Lessee delivers a dishonored check or draft to County in payment of any obligation arising under this Agreement, Lessee shall incur and pay a service charge in the then-prevailing amount established by County. In such event, the County may require that future payments be made by cashier's check or other means acceptable to the County.
- 5.6 **Place of Payments.** All payments required to be made by Lessee under this Agreement shall be made payable to "Broward County" and be provided to Broward County Accounting Division, Governmental Center, 115 South Andrews Avenue, Suite 203, Fort Lauderdale, Florida 33301, or to such other office or address as County may designate.

ARTICLE 6. USE OF THE PREMISES

- 6.1 **Required Services.** Lessee shall use the Premises solely as an animal shelter.
- 6.2 **Compliance.** Lessee shall not use the Premises for any purpose other than as specifically allowed by this Agreement and Scope of Work outlined in **Exhibit B**.

ARTICLE 7. OBLIGATIONS OF LESSEE

- 7.1 **Observation of Rules and Regulations.** Lessee shall require all Lessee's Parties entering upon or using the Premises to observe reasonable and nondiscriminatory rules and standards of conduct to preserve Lessee's peaceful enjoyment of the Premises and shall ensure the use of the Premises is in compliance with the terms of this Agreement. All Lessee's rules and standards of conduct must comply with Applicable Laws and this Agreement. Lessee shall take all lawful action to enforce compliance with this Agreement and the rules and standards of conduct by Lessee's Parties. Lessee's and Lessee's Parties' obligation to require the observance and obedience of their employees, invitees, suppliers, contractors, and subcontractors applies only while those persons are on or in occupancy of any portion of the Premises.
- 7.2 **Conduct of Operations.** Lessee and Lessee's Parties shall conduct their operations hereunder in an orderly and commercially reasonable manner, considering the nature of their operations so as not to unreasonably annoy, disturb, endanger, or be offensive to others at the Property.
- 7.3 **No Nuisance, Waste or Injury.** Lessee and Lessee's Parties shall not commit any nuisance, waste, or injury on the Premises, and shall not do or permit to be done anything that may result in the creation or commission of any nuisance, waste, or injury on the Premises.
- 7.4 **No Obnoxious Odors, Smokes, or Noxious Gases or Vapors.** Lessee and Lessee's Parties shall not cause or allow any obnoxious odors, smokes, noxious gases, or vapors at the Premises.
- 7.5 **No Increase in Risk to Premises.** Lessee and Lessee's Parties shall not do, or permit to be done, anything upon the Premises: (a) that will invalidate or conflict with any fire insurance policies covering the Premises, any part thereof, or other contiguous premises on the Property; or (b) that may constitute a hazardous condition so as to increase the risks normally attendant regarding the operations permitted by this Agreement.

ARTICLE 8. ENVIRONMENTAL CONTAMINATION

Lessee and Lessee's Parties shall not discharge any hazardous substances, hazardous materials, hazardous waste, toxic substances, toxic pollutants, or such other pollutants, contaminants, substances, materials and wastes regulated by Applicable Laws ("Pollutants"). Lessee shall be responsible for discharge of Pollutants by Lessee or Lessee's Parties. Upon demand by County, Lessee shall immediately contain, remove and abate any pollutant to the satisfaction of County or any regulatory entity having jurisdiction over the Property. If Lessee does not take action within ten (10) days after demand by County to have such pollutants contained, removed, and abated, County may undertake the removal of the discharge; however, such action by County shall not relieve Lessee of its obligations under this or any of other provision of the Lease or as imposed by law. If County arranges for the removal, containment, or abatement of any Pollutants on the Premises, the costs of such removal shall be paid by Lessor to Lessee within ten (10) days after written demand by the County. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

ARTICLE 9. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS

- 9.1 **Compliance with Applicable Laws.** Lessee and Lessee's Parties shall comply with Applicable Laws that now or at any time during the Term apply to the Premises or any operations at the Premises.
- 9.2 **Assurances of Proper Safeguards.** Lessee and Lessee's Parties shall comply with governmental requirements to ensure proper safeguards for the protection of persons and property on the Premises.

ARTICLE 10. MAINTENANCE AND REPAIR

- 10.1 **Responsibility for Maintenance and Repair.** Lessee shall be responsible for routine maintenance and repair of the Premises, including, but not limited to, pest control, janitorial services, and the following:
- a. Lessee shall maintain the Premises, including both the interior and exterior, in a good state of repair (excepting those responsibilities of County as set forth in paragraph 10.2) and maintain the Premises in a clean, orderly and safe condition, including picking up and sweeping parking areas so as to avoid injury to persons and property.
 - b. Lessee shall be responsible for interior and exterior maintenance, including exterior and interior touch up painting, ceiling tiles, carpet cleaning and repairs, the irrigation system repairs, including sprinkler heads and controls; landscaping maintenance on the Property; minor plumbing repairs including

minor backups, dripping faucets, running toilets, and grease trap maintenance on the Property.

- c. Lessee shall maintain the Premises in a clean, neat, and orderly condition at all times, free from garbage, debris, or other unsightly and unsanitary waste mater (whether solid or liquid). Any such garbage, debris or other waste matter as may be temporarily stored in the open shall be kept in suitable garbage and was receptacles. Lessee shall use care when effecting removal of all such waste matter and shall comply with all laws, ordinances, rules, regulations, and procedures of all applicable governmental authorities.
 - d. Lessee shall maintain on the Premises all fire alarms, fire sprinklers, and any other safety equipment, including fire extinguishers and Ansul systems, which may be required by Applicable Laws. Lessee shall also be responsible for maintaining the security system, including all cameras and alarms.
 - e. Lessee shall be responsible for maintaining, changing and replacing all air conditioning filters, light bulbs, and ballasts on the Premises. Lessee shall also maintain and replace, as necessary, all free-standing appliances such as refrigerators, dishwashers, dryers, washing machines, exhaust hoods, and other equipment related to the Lessee's use of the Premises.
 - f. Lessee shall repair all damage to the Premises (including, but not limited to, any fencing, gates, lighting, or pavement) within thirty (30) calendar days after the occurrence of such damage, which is the result of any act, omission, gross negligence, or misconduct on the part of the Lessee, its employees, agents, contractors or invitees.
- 10.2 Except as provided herein and as specifically assigned to Lessee in Section 10.1, County shall be responsible for maintenance and repair of the Premises as follows:

10.2.1 County shall maintain the structural components of the Premises, including, but not limited to, the roof and walls including waterproofing and painting exterior walls as needed to maintain the premises in good condition, window systems, gates, locks, and fences.

10.2.2 County shall maintain the mechanical systems on the Premises including pumps, direct expansion air conditioning equipment, chillers, condensing units, air handling units, and air distribution equipment and controls.

10.2.3 County shall maintain plumbing systems on the Premises including water pumps, irrigation pumps, backflow prevention, domestic water distribution systems, and major sewer blockage.

10.2.4 County shall maintain and repair all built-in fixtures on the Premises such as toilets, faucets, showers, partitions, plumbing infrastructure, and drinking fountains.

10.2.5 County shall conduct all repairs of the parking lot on the premises, including needed sealing, stripping, and repairs of asphalt.

10.2.6 County shall maintain the electrical systems on the Premises including, the distribution system to the outlet (switch gear, transformers, wiring, and panels), emergency generator (including fuel and underground tanks) and transfer switch.

Should any repairs to the Premises be necessitated due to an act, omission, negligence, or misconduct on the part of Lessee, its employees, agents, contractors, or clients, then Lessee shall be responsible for making any such repairs. Lessee shall, at County's option, either commence making such repairs or reimburse County for making such repairs no later than fifteen (15) calendar s after written demand from County.

- 10.3 The Parties further agree that prior to the start of any work at the Premises, County will assess the nature of the work to be done; inform Lessee in writing of the nature of the work to be done; determine, when needed, whether County or Lessee will incur the cost for the work; and provide Lessee with a price range within which County would charge to complete the work.
- 10.4 When any required work is the responsibility of Lessee, Lessee will have the option of requesting price quotes from external vendors and using such vendors, provided all required approvals are obtained and the final product satisfies all pertinent City, County or other code requirements. Should Lessee opt for County to complete the work, Lessee will so inform County in writing within a reasonable time. For any maintenance and repair of the Premises for which the County is responsible, the County shall commence making said repairs within thirty (30) calendar s after the occurrence of such damage, which is not the result of any act, omission, gross negligence, or misconduct on the part of the Lessee, its employees, agents, contractors or invitees.
- 10.5 **Right to Entry, Inspection, and Testing.** Lessee shall permit entry, inspection, and testing, at all reasonable times, by inspectors of any federal, state or County agency having jurisdiction under any law, rule, regulation, or order, applicable to

the Premises or the operations at the Premises. This right of entry, inspection, and testing does not impose a duty on County to take any action and will not impart liability on County should it not take any action. County, by its officers, employees, agents, representatives, and contractors may, at all reasonable times, enter the Premises to inspect the Premises, to observe Lessee's performance of its obligations under this Agreement, and to do any act or thing that County must or may do under this Agreement or otherwise. Additionally, representatives of County may, in their sole discretion, enter the Premises at reasonable times to inspect same to determine if Lessee is maintaining the Premises as required by this Agreement.

ARTICLE 11. INSURANCE REQUIREMENTS

- 11.1 Lessee shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages set forth in **Exhibit C**, in accordance with the terms and conditions required by this article. If services are required of Lessee pursuant to this Agreement subsequent to the expiration of the Agreement, Lessee shall provide, pay for, and maintain in force such insurance coverages until County determines all services required of Lessee have been completed. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A-, and that maintain a registered agent in Broward County, Florida upon whom service of process may be made.
- 11.2 Lessee shall specifically protect County by naming Broward County as an additional insured/loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, and any Property or Environmental Insurance policies.
- 11.3 All retentions, deductibles, and exclusions must be declared in writing and approved by County. Lessee shall be solely responsible to pay all deductibles or retentions.
- 11.4 If Lessee maintains broader coverage or higher limits than the minimums shown in **Exhibit C**, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Lessee.
- 11.5 Lessee shall provide written notice to County of any cancellation or restriction of insurance at least thirty (30) days prior to the date of expiration, or ten (10) days prior to the date of expiration for cancelation due to non-payment, and shall concurrently provide County with a copy of its updated Certificates of Insurance. Upon request by County, Lessee shall provide a copy of any policy required by this article within fourteen (14) days of a written request to Lessee, by providing a copy of the policy. Any insurance coverage that is written on a "claims made" basis

must remain in force for two (2) years after the termination or expiration of this Agreement. Commercial General Liability Insurance shall be written on an “occurrence” basis only.

- 11.6 County may modify the insurance coverages required under this article at any time as County determines necessary to protect County’s interest. In such event, County shall notify Lessee of the modified requirements, and Lessee shall provide an updated Certificate of Insurance evidencing such modified coverages within thirty (30) days after County’s notice of the modification to the requirements.
- 11.7 **Subrogation.** Notwithstanding anything to the contrary in this Agreement, Lessee waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Lessee’s insurance hereunder. Lessee shall obtain from its insurers a waiver of subrogation in favor of County in connection with any loss or damage covered by Lessee’s insurance.
- 11.8 **Certificate Holder Address.** The certificate holder address shall read “Broward County, c/o Real Property Section, 115 South Andrews Ave, Suite 501, Fort Lauderdale, Florida 33301” or such other address as may from time to time be required by County.
- 11.9 **Subcontractor Coverage.** Any subcontractor performing work for Lessee shall have Broward County listed as a certificate holder for all coverages and as an additional insured for its General Liability, Excess Liability, and Pollution coverages. Lessee shall require its subcontractors to provide all appropriate and necessary insurance coverages in their respective agreements
- 11.10 The failure of County to demand evidence of the required insurance or to identify any deficiency in Lessee’s coverage based on the evidence of insurance provided shall not be construed as a waiver by County. The insurance requirements required under this Agreement are minimum requirements and shall in no way limit the Lessee’s liability arising out of the work performed or related activities.
- 11.11 The provisions of this Article 11 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 12. DAMAGE TO OR DESTRUCTION OF PREMISES

- 12.1 **Removal of Debris.** If the Premises, or any part thereof, are damaged by fire, the elements, or other casualty, Lessee shall promptly remove all debris resulting from such damage and shall promptly take all necessary action and repairs to protect the safety of persons entering the Premises. To the extent that such measures are covered by Lessee’s insurance, all proceeds thereof shall be used by Lessee for such purpose. If Lessee fails to promptly comply with the provisions hereof, County may take any measures it deems necessary to render the Premises in a

safe condition, and Lessee shall be fully responsible for any of County's expenses. Lessee shall pay all expenses incurred by County within ten (10) days of written demand from County. If there are insurance proceeds covering such measures, the proceeds shall be paid to County.

- 12.2 Lessee agrees that all personal property placed on the Premises shall be at the risk of Lessee. Lessee shall promptly notify County in writing of any damage to the Premises and any occurrence, incident, or accident occurring on the Premises.
- 12.3 **Termination upon Destruction.** In the event of damage or destruction to all or any portion of the Premises that renders the same untenantable, County, in its sole discretion, may terminate this Lease, and Lessee shall vacate the premises and surrender the Premises to County, and thereafter have no further liability.

ARTICLE 13. INDEMNITY

Lessee shall at all times hereafter indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses (collectively, a "Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused, in whole or in part, by any intentional, reckless, or gross negligent act or omission of Lessee, its current or former officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement. In the event any Claim is brought against an Indemnified Party, Lessee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the County and the County Attorney, any sums due Lessee under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 14. RIGHTS OF COUNTY RESERVED

- 14.1 **Utility, Mechanical, and Other Systems.** County, may, or cause or permit others to, construct, maintain, repair, alter, replace, install, and rebuild, over, in, or under the Premises, existing and future utility, mechanical, electrical and other systems and parts thereof, and enter the Premises at all reasonable times for any such purposes, as may, in County's opinion, be deemed necessary or advisable. County, in the exercise of rights hereunder, will not unreasonably interfere with Lessee's actual use and occupancy of the Premises.

- 14.2 **Entry to Show.** At any time during Lessee's ordinary business hours, County, through its agents and employees, whether or not accompanied by prospective occupiers or users of the Premises, may enter the Premises to show it to prospective tenants.
- 14.3 **No Eviction of Lessee.** The exercise of any or all of the foregoing rights by County or others shall not be construed to be an eviction of Lessee nor be made the grounds for any abatement of rent or the basis for any claim or demand for damages, consequential or otherwise.
- 14.4 **Maintenance of Utility Easements.** County reserves the right to maintain any utility easements on the Premises as County may now or in the future determine, in its sole discretion, are necessary to serve the needs of the Property. Lessee takes the Premises subject to these easement requirements. Utility easements may be used for, but are not limited to, the installation of water distribution, sewage collection, underground electrical, telephone and telecommunications conduits, and above ground lighting and power poles. County will restore any Improvements Lessee has made, at County's cost, if the Improvements are materially damaged by any utility's installation made by County, and County shall take reasonable steps to ensure that any such installation is performed in a manner not unreasonably disruptive to Lessee's operations.
- 14.5 **Police and Regulatory Powers.** Nothing herein contained shall limit County's ability to exercise its police and regulatory powers or its powers of eminent domain.

ARTICLE 15. ASSIGNMENT AND SUBLETTING

Lessee shall not sublet the Premises or any part thereof, or transfer, assign, pledge, or otherwise encumber this Agreement or any rights or obligations under this Agreement, or allow this Agreement to be assigned by operation of law or otherwise (any such action being called an "Assignment"). Any such Assignment shall be null and void and of no force or effect. Additionally, Lessee may not use a Subcontractor in the performance of any of its services outlined in **Exhibit B** without prior written approval of County, which may be provided through its County Administrator or the Contract Administrator.

ARTICLE 16. REMEDIES TO BE NONEXCLUSIVE

Unless otherwise expressly stated herein, no remedy herein conferred upon or reserved to County or Lessee is intended to be exclusive of any other remedy herein provided or otherwise available, and each shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Unless otherwise expressly stated herein, all rights and remedies of the Parties hereunder or at law or in equity are cumulative, and

the exercise of any right or remedy does not exclude or waive the right to the exercise of any other.

ARTICLE 17. SURRENDER AND HOLDOVER

- 17.1 **Surrender to County.** Upon the expiration or early termination of this Agreement, Lessee shall yield and deliver peaceably and promptly to County the possession of the Premises. Lessee shall surrender the Premises in the condition existing at the commencement of the Lease, reasonable wear and tear excepted. All maintenance and repairs on the Premises to be completed by Lessee shall be completed before surrender. Lessee shall cause all occupants, legal or otherwise, to vacate the Premises, pay in full all fees and other amounts payable to County that are then due and owing, and remove all personal property before surrender. Upon surrender, Lessee shall deliver to County all keys to the Premises. Lessee shall, at its sole expense, take all actions that are required to remove from the Premises any and all Pollutants, whether stored in drums or found in vats, containers, distribution pipelines, or the like, or discharged into the ground.
- 17.2 **Holdover.** Any holding over of Lessee after the expiration or earlier termination of this Agreement shall not renew and extend same, but shall operate and be construed as a tenancy at sufferance, pursuant to Section 83.04, Florida Statutes, as amended, and Lessee shall be required to pay to County during any holdover period monthly rent equal to double the rent for the Premises. All other provisions of this Agreement shall remain in effect during such holdover period. Lessee shall be liable to County for all loss or damage on account of any such holding over after the expiration or earlier termination of this Agreement, whether such loss or damage may be contemplated as of the Effective Date. County reserves the right to pursue all remedies available to it under Applicable Laws as a result of Lessee's holdover. Acceptance of rent or any other payments by County in the event that Lessee fails or refuses to surrender possession shall not operate as County's consent to Lessee's continued possession nor shall it constitute a waiver by County of its right to immediate possession of the Premises.
- 17.3 **County Not Obligated to Accept Surrender.** In the event Lessee fails to surrender the Premises in the condition required by this Agreement or has failed to complete any of the obligations due under this Agreement, County shall not be obligated to accept Lessee's surrender of the Premises until same have been satisfied and Lessee shall be considered to be holding over and subject to the provisions of Section 17.2. During the period of time from the Termination Date of this Agreement and until County is satisfied, in its sole discretion, with Lessee's surrender of the Premises, Lessee shall be considered a holdover Lessee.
- 17.4 **Final Walkthrough.** Prior to County's acceptance of surrender, a final exit walkthrough inspection shall be conducted by Lessee and the County to determine compliance with this article and the County's acceptance of the condition of the

Premises. The County's acceptance of the condition of the Premises and satisfaction of the surrender thereof shall be reduced to writing by the County. In the event Lessee fails to comply with the terms of this Article 17, County reserves the right to perform all necessary work to bring the Premises to its original condition prior to Lessee's occupancy, normal wear and tear excepted, and Lessee shall reimburse County for all expenses incurred within fifteen (15) days after written demand from County.

- 17.5 **Acceptance of Surrender of Premises.** No agreement of surrender or an acceptance of surrender of the Premises is valid unless and until it has been reduced to writing and signed by County's and Lessee's duly authorized representatives.
- 17.6 The provisions of this Article 17 shall survive the expiration or termination of this Agreement.

ARTICLE 18. REMOVAL OF PROPERTY

- 18.1 **Removal of Inventory and other Personality.** Lessee may, at any time during the Term, remove its personal property from the Premises. Lessee shall immediately repair any damage to the Premises caused by its removal of any personal property and shall keep the Premises in the condition required under Article 10.

On or before the expiration or earlier termination of this Agreement, Lessee shall remove all its personal property from the Premises. If Lessee shall fail to remove same by the expiration or earlier Termination Date of this Agreement or as otherwise required herein, such property shall be deemed to have been abandoned by Lessee and may be disposed of by County in accordance with Florida law. In such event: (i) title to such movable fixtures, equipment, and inventories shall vest in County, at no cost to County; or (ii) County may remove such property to a public warehouse for deposit; or (iii) County may retain same in its own possession and sell same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage, and sale; second, to any sums owed by Lessee to County with any balance remaining to be paid to Lessee. If the expenses of such removal, storage, and sale shall exceed the proceeds of sale, Lessee shall pay such excess to County within fifteen (15) days after written demand from County. Alternatively, in County's sole option, if Lessee shall fail to remove same by the expiration or earlier Termination Date of this Agreement or as otherwise required herein, Lessee may be considered to be a holdover Lessee subject the provisions of Section 18.2.

- 18.2 The provisions of this Article 18 shall survive the expiration or early termination of this Agreement.

ARTICLE 19. NOTICES

19.1 **Notices.** In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this article.

FOR COUNTY:

County Administrator
Governmental Center, Suite 421
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email: bhenry@broward.org

With copies to:

Director of Real Property
Governmental Center
115 South Andrews Avenue, Suite 501
Fort Lauderdale, Florida 33301
Email: pbhogaita@broward.org

Director of Animal Care and Adoption Division
2400 Southwest 42nd Street
Fort Lauderdale, Florida 33312
Email: lcombs@broward.org

FOR LESSEE:

Email:

With copies to:

Email:

Email:

ARTICLE 20. UTILITIES

- 20.1 **Lessee Pays for Utilities.** Lessee shall at all times pay for all utilities, fees, or charges that are now or hereafter charged or assessed with respect to operations at the Premises. Lessee shall install the metering devices for such utilities at Lessee's sole cost. The metering devices will become the property of County upon installation. Extension of utility mains or services to meet Lessee's needs on the Premises shall be at Lessee's sole expense and will also become County's property upon installation. Lessee shall not commingle or share metered utilities at the Premises or beyond the Premises boundary.
- 20.2 **Failure, Delay, Interruption in Service.** A failure, delay or interruption in supplying any services for any reason whatsoever (whether or not a separate charge is made for same) shall not be construed to be an eviction of Lessee, grounds for any diminution or abatement of rent, or grounds for any claim by Lessee under this Agreement for damages, including any consequential damages.

ARTICLE 21. OTHER PROVISIONS

- 21.1 **Interpretation.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.
- 21.2 **Law, Jurisdiction, Venue, Waiver of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, LESSEE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL**

BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

- 21.3 **Severability.** In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.
- 21.4 **Relationship of Parties.** The relationship of County and Lessee hereunder is the relationship of lessor and lessee. Services provided by Lessee shall be subject to the supervision of Lessee and such services shall not be provided by Lessee or Lessee's Parties, as agents of County.
- 21.5 **Third-Party Beneficiaries.** Neither Lessee nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
- 21.6 **Priority of Provisions.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 25 of this Agreement, the provisions contained in Articles 1 through 25 shall prevail and be given effect.
- 21.7 **Joint Preparation.** This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.
- 21.8 **Incorporation by Reference.** Any and all Recital clauses and representations stated herein are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.
- 21.9 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Lessee or others delegated authority or otherwise authorized to execute same on their behalf.
- 21.10 **Prior Agreements.** This Agreement represents the final and complete

understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

- 21.11 **Materiality and Waiver of Breach.** Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 21.12 **Nondiscrimination.** Neither Party to this Agreement shall discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.
- 21.13 **Condemnation.** If at any time during the Term, the power of eminent domain shall be exercised or threatened whether by condemnation proceeding or threat or imminence thereof (a "Taking") of the entirety of the Premises or of substantially all of the Premises so as to render the Premises untenable shall occur, such Taking shall be deemed to have caused this Agreement to terminate and expire as of the date of such Taking. For purposes of this Agreement, the date of Taking shall be the earlier of the date upon which actual possession of the Premises or a portion thereof, as the case may be, is acquired by any lawful power or authority, or the date in which title vests in such lawful power or authority. The rent required to be paid by Lessee shall be paid up to the date of such Taking. Lessee shall in all respects keep, observe, and perform all the terms and conditions of this Agreement up to the date of such Taking.

County agrees to promptly notify Lessee of any eminent domain proceeding, and Lessee, at its sole cost and expense, will be entitled to join such proceeding and to defend Lessee's interest in the Premises affected by such proceeding, and, to the extent permitted by law, to be awarded damages attributable to the value of Lessee's unexpired leasehold estate in the Premises. If at any time during the Term a Taking of less than the whole of the Premises shall occur, rent shall thereafter be reduced in proportion to the reduction in the rentable area of the Premises.

Termination of this Agreement by County shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any

interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement, or any other facts or circumstances arising out of or in connection with this Agreement.

- 21.14 **Waiver of Claims.** Lessee hereby waives any claim against County and its officers, commissioners, and employees for any consequential damages, including, but not limited to, any loss of business or anticipated profits. No officer, commissioner, or employee of County shall be charged personally or held contractually liable under any term or provisions of this Agreement, including as amended, due to an actual or alleged breach of this Agreement or the execution or attempted execution of this Agreement.
- 21.15 **Successors and Assigns Bound.** Without waiving any of the requirements of Article 15, this Agreement shall be binding upon and inure to the benefit of the successors and the permitted assigns of the Parties.
- 21.16 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- 21.17 **Written Approvals.** All notices, approvals and consents required to be obtained hereunder must be in writing to be effective.
- 21.18 **Force Majeure.** If the performance of this Agreement, or any obligation hereunder is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, ordinance of any governmental agency, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds sixty (60) days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement upon written notice to the Party so affected. This section shall not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.
- 21.19 **Use of County Logo.** Lessee shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.
- 21.20 **Time of Essence.** Time is of the essence with respect to this Agreement and shall

apply to all terms and conditions contained in this Agreement.

- 21.21 **Authorized Representatives.** Unless otherwise expressly stated herein or in the applicable Procurement Code, Code of County Ordinances, or Administrative Code of Broward County, the Director of the Broward County Real Property Section may act on behalf of County to exercise the authority and powers of County under this Agreement.
- 21.22 **Survival.** Upon termination or expiration of this Agreement, Lessee shall remain liable for all obligations and liabilities that have accrued prior to the date of termination or expiration.
- 21.23 **No Recordation of Lease; Memorandum of Lease.** Lessee may not record this Agreement in the Official Records of Broward County, Florida. A violation of this Section 21.23 by Lessee will automatically void those provisions and portions of this Lease which run to the benefit of Lessee.
- 21.24 **County as Landlord and Police and Regulatory Powers.** County is the public body, agency, or instrumentality that is a Party to this Agreement and for which this Agreement is to be performed. In all respects, County's performance under this Agreement is pursuant to County's position as landlord. In the event that County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body, and shall not be attributable in any manner to County as a Party to this Agreement. County cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations governing the Premises, any Improvements thereon, or any operations at the Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of County to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules, and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing in this Agreement shall be considered zoning by contract.
- 21.25 **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

ARTICLE 22. QUIET ENJOYMENT

Lessee, upon paying the rent herein reserved and performing and observing all the terms and conditions of this Agreement on Lessee's part to be performed and observed, shall peaceably and quietly have, hold, and enjoy the Premises during the Term, subject to all provisions of this Agreement.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

- 23.1 **Representation of Authority.** Lessee represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable agreement of Lessee, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Lessee has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Lessee. Lessee further represents and warrants that execution of this Agreement is within Lessee's legal powers, and each individual executing this Agreement on behalf of Lessee is duly authorized by all necessary and appropriate action to do so on behalf of Lessee and does so with full legal authority.
- 23.2 **Solicitation Representations.** Lessee represents and warrants that all statements and representations made in Lessee's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the Effective Date of this Agreement, unless otherwise expressly disclosed by Lessee.
- 23.3 **Contingency Fee.** Lessee represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Lessee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.
- 23.4 **Public Entity Crime Act.** Lessee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Lessee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Lessee has been placed on the convicted vendor list.
- 23.5 **Discriminatory Vendor and Scrutinized Companies Lists.** Lessee represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Lessee further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

- 23.6 **Breach of Representations.** County materially relies on the representations of Lessee stated in this article in entering into this Agreement. County shall be entitled to recover any damages it incurs to the extent any such representation is false. In addition, if any such representation is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Lessee, to deduct from the compensation due Lessee under this Agreement the full amount of any value paid in violation of a representation, or to recover all sums paid to Lessee under this Agreement.
- 23.7 **No Set Off.** Lessee represents that, through the date hereof, has no claims against County concerning any of the matters covered by this Agreement, and has no right of set off or counterclaims against any of the amounts payable by Lessee to County under this Agreement.

ARTICLE 24. IMPROVEMENTS BY LESSEE

- 24.1 **Improvements by Lessee.** All of Lessee's improvements, construction, additions, alterations, modifications, and renovations (collectively, the "Improvements") to the Premises or other areas require prior written approval by County. No reduction or abatement of rent shall be allowed for any interference with Lessee's operations by such construction.
- 24.2 **Ownership of Lessee Installed Improvements and Property.** All Improvements that are affixed to the Premises are a leasehold improvement and title thereto shall vest with County upon the expiration or earlier termination of this Agreement, unless otherwise agreed by the Parties. All installations at the Premises, including, but not limited to, cable, electric, and telecommunications, shall be deemed Improvements, and ownership shall vest in County upon installation. Lessee shall retain ownership of moveable personal property installed and paid for by Lessee, except as may be otherwise provided in this Agreement or other agreements.
- 24.3 **Liens.** Lessee shall not do nor permit to be done anything that shall result in the imposition of any liens on the Premises, or portion thereof, or the Improvements. If any lien or notice of lien shall be filed against the Premises, or portion thereof, or the Improvements, Lessee shall cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction within fifteen (15) days after notice of the filing thereof. Lessee shall not be deemed to be County's agent so as to confer upon any contractor or subcontractor providing labor or materials to the Premises or Improvements a mechanic's lien upon County's estate under the provisions of Chapter 713, Florida Statutes. Lessee shall not create or permit any lien on any fixtures on the Premises without obtaining, in each instance, the prior written approval of the Director of Real Property excluding, however, any purchase money security interest in any movable trade fixtures of Lessee installed at the Premises. Lessee shall not

pledge, hypothecate, or otherwise encumber its interests in this Agreement without the prior written consent of the County. County's interest in this Agreement shall not be subordinate to any leasehold mortgage or any claims, liens, or encumbrances affecting Lessee's interests in this Agreement without the prior written consent of the County Administrator.

- 24.4 **Landlord Lien.** Unless County, through its Board, provides otherwise in writing, all of Lessee's assets that are brought onto the Premises and used in connection with its business conducted on the Premises shall be subject to County's landlord lien on such assets as provided by applicable Florida law.

ARTICLE 25. ENTIRE AGREEMENT

This Agreement consists of Articles 1-25, together with **Exhibits A, B, and C**, attached hereto, and constitute the entire agreement of the Parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by County's and Lessee's duly authorized representatives. No representations or warranties are binding upon County unless expressed in writing in this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Lease and Services: BROWARD COUNTY, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board on the ____ day of _____, 20____ (Agenda Item No. ____), and _____, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Claudia Capdesuner (Date)
Assistant County Attorney

By _____
Annika E. Ashton (Date)
Deputy County Attorney

LESSEE

ATTEST:

_____, a Florida
not-for-profit corporation

Signature of Witness #1

By _____
Signature

Print Name of Witness #1

Print Name

Signature of Witness #2

Title

Print Name of Witness #2

____ day of _____, 20____

EXHIBIT A

The Property

EXHIBIT B

Scope of Work

- Remove from the ACAD Shelter a minimum of thirty (30) canines per month, of any size, breed, vetting status, or age, as determined by ACAD
- Remove from the ACAD Shelter a minimum of forty (40) felines and weaned kittens per month, as determined by ACAD
- Host a minimum of one (1) Rabies and Microchip clinic per month at the Pompano Shelter, supported by ACAD
- Partner with other groups that specialize in Pet Retention programs
- Maintain, staff, and operate a neonate kitten nursery, with a maximum capacity of fifty (50) kittens, in an ACAD FORT at the Pompano Shelter, outfitted by grants, donations awarded to ACAD and other partner groups
- Provide monthly transports of dogs and cats to out-of-State shelters
- Provide disaster relief support as needed for the pet friendly shelters

EXHIBIT C

Insurance