

LEASE AGREEMENT

Between

CITY OF ALAMEDA,
a municipal corporation organized and existing
under the laws of the State of California

as

LANDLORD

and

FRIENDS OF THE ALAMEDA ANIMAL SHELTER,
a California nonprofit public benefit corporation

as

TENANT

City Council
Exhibit A to
Agenda Item #6-A
12-06-11

**LEASE AGREEMENT
(Alameda Animal Shelter)**

THIS LEASE AGREEMENT (Alameda Animal Shelter) ("**Lease**"), dated as _____, 2011, is made by and between the **CITY OF ALAMEDA**, a municipal corporation organized and existing under the laws of the State of California ("**Landlord**") and **FRIENDS OF THE ALAMEDA ANIMAL SHELTER**, a California nonprofit public benefit corporation ("**Tenant**").

Recitals

This Lease is entered upon the basis of the following facts, understandings and intentions of the Landlord and Tenant:

A. Landlord owns certain real property located in Alameda, California, commonly known as 1590 Fortmann Way (or the Alameda Animal Shelter), together with the improvements thereon (the "**Property**").

B. Landlord and Tenant have agreed to make and enter into this Lease, whereby Tenant will lease from Landlord the Premises on the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, Landlord and Tenant hereby agree as follows:

1. **PREMISES.** Landlord does hereby lease, rent, and demise to Tenant and Tenant does hereby hire and rent from Landlord, the following premises comprised of the following as shown on Exhibit A attached hereto (collectively, the "**Premises**"):

1.1. **Building.** The building located on the Property, together with the improvements and fixtures situated therein (collectively, the "**Building**"), subject to the provision of adequate office space for two (2) part-time Animal Control officers. For purposes herein "**Animal Control**" means animal control operations administered by Landlord.

1.2. **Equipment.** Certain moveable and immoveable equipment and related personal property (collectively, "**Equipment**"), as more particularly described on Exhibit A-1 attached hereto and made a part hereof. During the Term (as defined below) of this Lease, Tenant shall be entitled to the exclusive use of such Equipment, subject to the terms and conditions set forth in this Lease.

1.3. **Land.** The outdoor exercise yard on the south side of the building and an exterior patio (collectively, the "**Land**").

1.4. **Parking Areas.** The parking area ("**Parking Area**"), subject to one (1) reserved space for police vehicles in front of the Building.

2. **TERM.**

2.1. **Term.** The term of the Lease shall be for fifteen (15) years commencing on the Lease Commencement Date (as defined below) and, unless sooner terminated pursuant to this Lease, terminating on December 31, 2026 (the "**Initial Term**") (subject to extension in accordance with this Section 2.1). The Initial Term, and any "Extension Term" (as defined below) or Extension Terms as to which Tenant has exercised its option in accordance with Section 2.1.1 are referred to in this Lease as the "**Term**". The term "**Lease Year**" as used herein shall mean any three hundred sixty-five (365) consecutive day period beginning on the Lease Commencement Date or any anniversary thereafter.

2.1.1. Upon condition that (i) no Event of Default is continuing und this Lease at the time of exercise or at the commencement of the applicable extension term, and (ii) subject to Landlord's prior written approval for each extension, then Tenant shall have the right to extend the Term for two (2) periods of five (5) years each (each an "**Extension Term**") following the expiration of the Initial Term or the expiration of the Term as extended by the first Extension Term, as applicable, by giving written notice ("**Extension Notice**") to Landlord at least one (1) year prior to the expiration of the immediately preceding Term.

2.1.2. Base Rent for each Extension Term shall be the same amount and payable in the same manner as provided in Section 3.1 below.

2.2. **Lease Commencement Date.**

2.2.1. The Lease Commencement Date shall be January 1, 2012 ("**Lease Commencement Date**").

2.2.2. For the purpose of this Lease, "**Force Majeure Events**" shall mean (i) any delays beyond the reasonable control of Landlord, such as acts of God, fire, earthquake, acts of a public enemy, riot, insurrection, unavailability of materials, governmental restrictions on the sale of materials or supplies or on the transportation of such materials or supplies, strike directly affecting construction or transportation of materials or supplies, shortages of materials or labor resulting from government controls, weather conditions, unavailability of possession of the Premises due to governmental action or inaction, or any other cause or events beyond the reasonable control of Landlord. The parties agree that if Landlord is unable to deliver possession of the Premises by the anticipated Lease Commencement Date, plus any extension thereto due to a Force Majeure Event(s), this Lease shall not be void or voidable, nor shall Landlord be liable to Tenant for any loss or damage resulting therefrom, and the expiration date of the Term of this Lease shall be extended for such delay; but in such event, Tenant shall not be liable for any Rent until the Lease Commencement Date; provided, however if such delays were caused or attributable to Tenant, Rent shall commence as of the scheduled Lease Commencement Date.

2.2.3. Prior to the Lease Commencement Date, Landlord and Tenant shall conduct a walk-through inspection of the Premises and acknowledge the results of such inspection by signing a physical condition report ("**Condition Report**"), in a form prepared by Landlord, setting forth the agreed physical appearance and condition of the Premises as of such time. To the extent that the Condition Report approved by Landlord and Tenant requires Landlord to repair, replace or perform any maintenance obligations (provided that such report

shall not create any obligations of Landlord except as expressly set forth in this Lease), Landlord shall complete such tasks within thirty (30) days thereafter; provided, however, to the extent such matters cannot be completed within such period, Landlord shall use its due diligence to complete such matters on an expeditious basis thereafter, subject to delays caused by Force Majeure Events.

3. **RENT.**

3.1 **Base Rent.** Tenant shall pay to Landlord as “**Base Rent**” One Dollar (\$1.00) per year. Each annual payment of Base Rent shall be paid in advance promptly on the first day of every Lease Year of the Term beginning on the Lease Commencement Date. Tenant shall not have the right to pay Base Rent for more than a single Lease Year at a time and may not pay the entire Initial Term (or for multiple Lease Years) on a lump sum basis. The Base Rent shall be paid without prior notice or demand, and without any setoff, counterclaim or deduction whatsoever. The Base Rent shall be paid at Police Department offices, or such other place as Landlord shall direct.

3.2 **“Rent” Defined.** As used in this Lease, the term “**Rent**” shall include Base Rent and/or any and all other charges and other amounts whatsoever payable by Tenant pursuant to this Lease.

3.3 **Security Deposit.** The security deposit has been waived.

3.4 **Default Rate.** If any portion of Rent shall be due and unpaid for more than five (5) days, it shall thereafter bear interest at the per annum rate equal to two percent (2%) per annum greater than the prime rate of interest announced from time to time by the Wall Street Journal, as the same may change from time to time (the “**Default Rate**”), from the due date until the date of payment thereof by Tenant.

3.5 **Late Charge.** If any payment of Rent or any part thereof to be made by Tenant to Landlord pursuant to the terms of this Lease shall become overdue for a period in excess of five (5) days after written notice from Landlord that the same is past due, a late charge of five cents for each dollar overdue shall be paid by Tenant for the purpose of defraying the expense incident to handling such delinquent payment, together with interest from the date such payment or part thereof was due, at the Default Rate. Nothing herein or in the imposition or acceptance of a late charge by Landlord shall be construed as a waiver of any rights of Landlord arising out of any default of Tenant; the right to collect any late charge or interest is separate and apart from any rights or remedies of Landlord relating to any default by Tenant.

3.6 **Survival.** The obligation of Tenant with respect to the payment of Rent shall survive the termination of this Lease.

3.7 **Net Lease.** Tenant hereby acknowledges and agrees that this Lease is intended to be a triple net lease to Landlord, as such term is commonly used for the leasing of industrial/commercial properties, except as expressly herein set out, such that Landlord is not responsible for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof or the business carried on therein, and that Tenant shall pay all charges, impositions, costs and expenses of every

nature and kind relating to the Premises except as expressly otherwise agreed herein. Except as otherwise expressly set forth in this Lease with respect to the Building Structural and MEP Systems (as defined below), all costs of maintenance and repair of the Premises, all costs of insuring the Premises, and all taxes allocated to the Premises shall be paid by Tenant.

4. **USE OF PREMISES.**

4.1 **Permitted Use.**

4.1.1 **Provision of Services.** The sole purpose for which the Premises may be used ("**Permitted Use**") by Tenant or authorized contractors, subcontractors or licensees of Tenant, is for the operation of the Alameda Animal Shelter and the provision of Services (as defined below) or Additional Services (as defined below) during the Term of this Lease.

4.1.2 Tenant shall provide the following services (collectively, "**Services**") at the Premises during the Term:

(i) **Abandoned or Stray Animals.**

(A) Tenant shall accept all Companion Animals (as defined below) that come into custody of Animal Control. "**Companion Animals**" means domestic animals typically maintained by the Alameda residents as pets, including, without limitation dogs, cats, certain rodents and birds, and certain non-poisonous reptiles, but excluding insects, arachnids, crustaceans, and fish. Tenant may also accept other animals from Animal Control in Tenant's discretion. Landlord and Tenant shall coordinate to adopt standard operating procedures for the transfer of animals from Animal Control to Tenant.

(B) Companion Animals shall be held for the time required by applicable Law (e.g., the Hayden Law) (the "**Holding Period**") and Tenant shall make reasonable efforts to locate such animal's owner(s). After the expiration of the Holding Period, Tenant shall make reasonable efforts to have new owner(s) adopt such animals, and may contact any qualified Rescue Group (as defined below) for the transfer of such animals to such Rescue Group. For purposes herein "**Rescue Group**" shall mean a nonprofit, 501(c)(3) organization whose mission includes finding permanent homes for animals in accordance with applicable Law, and if applicable, written guidelines established by Landlord and/or Tenant.

(C) Tenant shall use best efforts to avoid killing any animals in its custody. Killing shall be acceptable only when considered on a case-by-case basis and approved in writing with respect to the applicable animal by Tenant's senior employee employed at the Premises. Such decision shall be made taking into account the principles of mercy to the animal, or danger to the community, including other animals on the Premises or in the community.

(ii) **Owner-Surrendered Animals.** Tenant shall accept all owner-surrendered Companion Animals from residents of the City of Alameda, California (the "**Service Area**"). Tenant may, but shall not be required to accept other owner-surrendered animals, including, but not limited to wild animals, food animals and other livestock, and any other non-

Companion Animal that may, in Tenant's reasonable judgment pose a risk to Tenant's personnel, or to other animals on the Premises or in the community.

(iii) Dead Animals. Tenant shall accept custody of dead animals from Animal Control or from the community. Landlord and Tenant shall coordinate to adopt standard operating procedures for the transfer of dead animals from Animal Control to Tenant.

(iv) Animal Licensing. Tenant shall perform licensing services for all Companion Animals presented to it, and to require that any stray Companion Animal redeemed by its owner or released to a new owner be licensed. Tenant shall charge the City of Alameda's amounts provided in the current master fee schedule for such licensing; as such master fee schedule may be changed from time to time.

(v) Service Area. The Premises shall be operated to meet the animal services needs of the Service Area. Tenant may elect to provide its services outside the Service Area, so long as the provision of such services does not interfere with Tenant's provision of services to the Service Area.

(vi) Out of Service Area Surrenders. Tenant shall not be required, but may elect (subject to Section 4.11(v) above), to accept animals outside the Service Area.

(vii) After-Hours Drop-Off Boxes. Tenant shall maintain after-hours drop-off boxes and shall take custody of animals dropped off in such boxes.

(viii) Pound Seizures. Landlord and Tenant shall not permit the release of an animal to an agency for research or vivisection purposes.

4.1.3 Other Community Services. Tenant shall be permitted to use the Premises to provide other community services closely related to the Services, such as providing pet training, bereavement classes and other education, holding meetings related to animal welfare, and conducting tours of the Premises, provided the provision of such other community services does not interfere with the provision of Services by the Tenant.

4.1.4 Compensation for Services. Landlord shall pay to Tenant on an annual basis Three Hundred Thousand Dollars (\$300,000) (the "**Annual Compensation**") for the Tenant's provision of the Services during the Term of this Lease. Landlord shall also pay the cost of two (2) part-time employees performing animal control services who shall be employed by Landlord and based on the Premises. Tenant's right to receive the Annual Compensation and Landlord's obligation to pay the cost of the two (2) part-time employees shall terminate upon the termination of this Lease.

(i) Commencing on the Lease Commencement Date and terminating as of the expiration or earlier termination of the Term, the Annual Compensation shall be paid in monthly installments of Twenty-Five Thousand Dollars (\$25,000), on or about the first day of each month, provided there are no uncured Events of Default (as defined below) with respect to Tenant.

(ii) Commencing on January 1, 2014, the Annual Compensation shall be adjusted annually by the Bay Area Consumer Price Index (as defined below). For example, if the change in the Bay Area Consumer Price Index between the Lease Commencement Date (January 1, 2012) and January 1, 2014 is 6.3%, then the Annual Compensation paid to Tenant in 2014 would equal Three Hundred Eighteen Thousand Nine Hundred Dollars (\$318,900), which would be calculated as follows:

$$\$300,000 \times 1.063 = \$318,900$$

As used in this Lease, the term "Bay Area Consumer Price Index" shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "**Bureau**") "All Items" for All Urban Consumers in the San Francisco-Oakland-San Jose Metropolitan Area, (1982-84=100). Should the Bureau discontinue the publication of the Bay Area Consumer Price Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as determined by Landlord shall be substitute therefor.

4.1.5 Compensation for Additional Services.

(i) Landlord may request Tenant to perform services in addition to the Services described in Section 4.1.1 above, provided that (A) the cost of and compensation for such additional services ("**Additional Services**") shall be mutually agreed upon by Landlord and Tenant in writing, and (B) Landlord must authorize all such Additional Services and compensation to Tenant therefor in writing ("**Authorized Additional Compensation**"), prior to Tenant performing any such Additional Services.

(ii) If as part of Additional Services, Landlord requests that any animals be held and cared-for at the Premises for any period of time, as for evidence, quarantine or any other non-routine purpose, then Tenant shall not have the right to charge any fees for boarding such animals up to sixty (60) days. However, Landlord shall pay Tenant, as Authorized Additional Compensation, the actual cost of any further services (e.g., veterinary costs) required to maintain such animals in good health and a disposition fee in case of such animal's death provided that such costs and payment are approved by Landlord in accordance with the procedure set forth in Section 4.1.3(i) above for Authorized Additional Compensation.

4.1.6 Fees. During the Term, Tenant shall collect fees from the public for Services based upon Tenant's adopted schedule of fees, and shall devote such fees entirely and exclusively to the performance of the Services and operations of the Premises.

4.2 No Other Uses. The Premises shall not be used for any other purposes other than the Permitted Use without the prior written approval of Landlord.

4.3 No Commitment for Future Conveyance. Tenant understands and acknowledges that this Lease is not and does not constitute a commitment by Landlord to create any priority with regard to the ultimate disposal of the Premises, in whole or in part, to Tenant.

4.4 Compliance with Law. Tenant shall comply with all laws, ordinances, rules, regulations and codes, which includes, but is not limited to, the Americans With Disabilities Act

("ADA") and hazardous materials laws and laws pertaining to narcotics and other medical substances, of all municipal, county, state and federal authorities (collectively, "Law") pertaining to Tenant's use and occupation of the Premises and performance of Services and Additional Services. Notwithstanding anything to the contrary in the foregoing, Landlord shall be responsible for ADA compliance with respect to matters existing within the Premises as of the date of this Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or any public or private nuisance, or other act or thing which disturbs the quiet enjoyment of any other tenant in the buildings, nor shall Tenant store any materials on the Premises which are visible from areas adjacent to the Premises, unless otherwise specifically set forth in this Lease. Tenant shall also specifically not permit any objectionable odor to escape or be emitted from the Premises and shall insure sanitation and freedom from odor, smell and infestation from rodents or insects. Tenant, at its expense, shall provide (and enclose if required by Law, codes or Landlord) a dumpster or dumpsters for Tenant's trash in a location and manner approved by Landlord, and shall cause its trash to be removed at intervals reasonably satisfactory to Landlord. In connection therewith, Tenant shall keep the dumpster(s) clean and insect, rodent and odor free.

4.5 Use Permit and Licenses. Tenant and any of its subtenants shall obtain a City of Alameda Use Permit, if applicable, and other applicable City permits and approvals for any intended use of the Premises (collectively, "Use Permit"). Tenant shall procure and maintain all other permits, certificates, and licenses required for Tenant to perform the Services and if applicable, Additional Services, and to operate the Premises in accordance with all applicable Law.

4.6 Other Revenues. Landlord shall receive any and all revenues from penalties imposed for violations of leash laws, and any and all other Law applicable to animal control. Tenant shall have no obligation to collect, nor have the right to receive, any such revenues.

4.7 Standard of Care. Tenant shall exercise the degree of care, skill and diligence ordinarily provided by professional animal services organizations comparable to other organizations operating and maintaining animal shelters and providing services similar to the Services.

5. ASSIGNMENT AND SUBLETTING.

5.1 Tenant shall not, without Landlord's prior written consent at Landlord's sole discretion, (i) assign, convey, mortgage, pledge, encumber or otherwise transfer (whether voluntarily or otherwise) this Lease or any interest under it; (ii) allow any transfer of or any lien upon Tenant's interest by operation of law; (iii) sublet the Premises or any part thereof; or (iv) permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant and its employees.

5.2 Tenant's request for consent to any sublet or assignment shall be in writing and shall contain the name, address, and description of the business of the proposed assignee or subtenant, its most recent financial statement and other evidence of financial responsibility, its intended use of the Premises, and the terms and conditions of the proposed assignment or subletting. Within thirty (30) days from receipt of such request, Landlord shall either: (1) grant

or refuse consent; or (2) elect to require Tenant to: (a) as to a proposed sublease, execute an assignment of Tenant's interest under this Lease to Landlord, upon terms and conditions reasonably required by Landlord, together with an assignment of Tenant's interest as landlord in any such proposed Lease, or (b) as to a proposed assignment, terminate this Lease and the term hereof effective as of the last day of the third (3rd) month following the month in which the request was received.

5.3 For purposes of this section, any transfer or change in control of Tenant by operation of law or otherwise shall be deemed an assignment hereunder, including, without limitation, any merger, consolidation, dissolution or any change in more than fifty percent (50%) of the interests of Tenant, whether in a single transaction or a series of related transactions.

5.4 If, with the consent of Landlord, this Lease is assigned or if the Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Rent herein reserved. If Landlord consents to any such subletting or assignment, it shall nevertheless be a condition to the effectiveness thereof that a fully-executed copy of the Lease or assignment be furnished to Landlord and that any assignee assumes in writing all obligations of Tenant hereunder. No consent to any assignment, subletting or occupancy shall be deemed a waiver of any of Tenant's covenants contained in this Lease nor the acceptance of the assignee, subtenant or occupant as Tenant, nor a release of Tenant from further performance of any covenants and obligations under this Lease.

5.5 Any consent given by Landlord to an assignment or subletting of this Lease shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting.

6. **CONDITION OF PREMISES.** The Premises are delivered to Tenant by Landlord "as is, where is," and, as such, Landlord makes no warranty as to such facilities and property either as to their usability generally or as to their fitness for any particular purpose. Upon the expiration or earlier termination of this Lease, Tenant shall turn over to Landlord the Premises in the same condition in which they were received, reasonable wear and tear excepted. Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in satisfactory condition when Tenant took possession. No promises of Landlord to alter, remodel, repair or improve the Premises and no representation respecting the condition of the Premises have been made by Landlord to Tenant, except as expressly provided in this Lease.

7. **ALTERATIONS.**

7.1. Tenant shall not make any alterations, improvements, or additions to the exterior or interior of the Premises (collectively the "**Alterations**"), without Landlord's prior written consent in each and every instance, which consent may be conditioned upon criteria and/or requirements deemed necessary by Landlord. Any Alterations which add to, remove, or otherwise alter, the structural components of the Building, including the roof, any support structures, foundations, the exterior of the Building, and the fire retardant and other life safety systems of the Building, shall require Landlord's prior written consent, which may be withheld in Landlord's sole discretion. In the event Tenant desires to perform any Alterations, Tenant

shall first submit to Landlord a written description of the proposed Alterations, and, if Landlord requires, plans and specifications relating thereto, and obtain Landlord's written approval prior to commencing it. Approval of Alterations may be conditioned upon providing Landlord with a performance and payment bond satisfactory to Landlord in all respects in addition to other requirements deemed reasonably necessary to protect the interests of Landlord. Alterations as used herein shall not include minor changes made by Tenant to improve the appearance or utility of the Premises, such as rearrangement of furniture, redecoration and painting, changes in cat room layout, or removal of shelving, provided such minor changes do not affect in any way the Building Structural and MEP Systems (as defined below).

7.2. Prior to undertaking any Alterations, to the extent required by applicable Laws, Tenant shall submit an application to the applicable governmental authorities for review and obtaining approval of such plans and proposals for such Alterations to the Premises. In addition, Tenant shall also submit to Landlord a narrative description of all proposed Alterations on the Premises, with the projected schedule and costs thereof, and an analysis as to how and why such Alterations will or will not be visible from the exterior of the Building, or be substantially likely to adversely affect the human health, or the environment, or adversely impact the structure of the Building. All Alterations shall be done at the expense of Tenant without any costs or obligation to Landlord. No Alterations shall be undertaken by Tenant on the Premises, unless such Alterations has been approved by all applicable governmental authorities and all requisite permits have been obtained.

7.3. In the event Tenant intends to perform work requiring excavation below the surface of the Premises (whether inside or outside of the Building) or construction of a permanent structure on the Premises, Tenant must determine actual location of utilities using standard methods (i.e., potholing, metal fish line, etc.) and submit this information with an application to excavate or application to build a permanent structure to Landlord for approval (which shall also include the approval of applicable governmental authorities). The application should include a site plan showing the location of utilities and that construction will not take place above the utility line or within the utility easement, specifically showing that no permanent structures will be constructed in these areas. Tenant shall be responsible for complying with the provisions of the City of Alameda's Marsh Crust Ordinance, and if required, shall obtain a Marsh Crust Permit.

7.4. At the termination of this Lease, all improvements, whether temporary or permanent in character, made by Landlord or Tenant in or upon the Premises shall become Landlord's property upon conveyance of the Land and Premises to Landlord and shall remain upon the Premises at the termination of this Lease without compensation to Tenant (excepting only Tenant's movable office furniture, trade fixtures, and manufacturing, office and professional equipment, and any work approved by Landlord as to which, at the time of such approval, Landlord provided, in writing, that such work had to be removed at the termination of the Lease).

7.5. Before Tenant undertakes any Alterations which will disturb any known friable or non-friable asbestos in the Premises, if any, the Tenant, as part of its improvement plan submittal, shall set forth a plan providing how Tenant will handle any such asbestos, which plan

must be reviewed and approved by Landlord, before any such work which will disturb such asbestos in the Premises can commence.

7.6. Landlord, at its option and without any form of representation or warranty, shall have the right to modify, repair, refurbish and/or repaint the exterior of the Premises (and the Building containing the Premises) as determined in Landlord's sole discretion. Such right shall not cause any form of eviction, constructive or otherwise, and Tenant shall not be entitled to any abatement of amounts owing under this Lease; provided, however, Landlord shall use its good faith efforts to minimize disruption to Tenant's building operations.

8. **ACCESS BY LANDLORD**. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purposes upon prior written notice to Tenant. Landlord will normally give Tenant a minimum 24-hour prior notice of an intention to enter the Premises, unless the entry is required on an emergency basis for safety, environmental, operations or security purposes. Tenant shall ensure that a telephone roster is maintained at all times for on-call persons representing Tenant who will be available on short notice, 24 hours a day, 365 days per year, and possess and have authority to use all keys necessary to gain access to the Premises, to facilitate entry in time of emergency. Tenant shall ensure that Landlord has a current roster of such on-call personnel and their phone numbers. Tenant shall have no claim against Landlord for exercise of their rights of access hereunder. Portions of the utilities systems serving the Premises may be located within the Premises. Tenant agrees to allow Landlord and its utility suppliers reasonable access to the Premises for operation, maintenance, repair and replacement of these utilities systems as may be required. In executing operation, maintenance, repair or replacement of these systems, Landlord agrees to take all reasonable steps to limit interference with the use of the Premises by Tenant.

9. **UTILITIES**

9.1. Utilities will not be furnished to Tenant by Landlord. The obtaining of such utility services is solely the responsibility of Tenant. Any separate metering of utilities required by any utility provider shall be the responsibility of Tenant. Tenant shall pay all service charges, and all initial utility deposits and fees, for water, electricity, sewage, janitorial, trash removal, gas, telephone, pest control and any other utility services furnished to the Premises and the improvements on the Premises during the entire term of this Lease ("**Utilities**"). Tenant shall pay for all Utilities in addition to Base Rent. If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall pay to Landlord, as Additional Rent, its pro rata share of the cost of such services, as reasonably determined by Landlord. If any Utilities are not separately metered, Landlord shall have the right to determine Tenant's consumption by either submetering, survey or other methods designed to measure consumption with reasonable accuracy. Landlord shall not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Landlord may designate the provider of Utilities and in such event Tenant shall use such designated provider; provided that Tenant shall have no claim against Landlord, of any type, for any failure of such provider to provide such service, and Tenant's remedy, if any, shall be limited to such provider.

10. **MAINTENANCE SERVICES.**

10.1. Repairs By Landlord. Landlord shall maintain only the foundation, structural system including exterior walls (exclusive of all glass and exclusive of all exterior doors), roof, and electrical, plumbing, and heating/ventilation/air-conditioning systems of the Premises (collectively, the "**Building Structural and MEP Systems**") in good repair, except repairs rendered necessary by the negligence or intentional acts of Tenant, its employees, invitees or representatives, which shall be repaired by Tenant. Tenant shall promptly report, in writing, to Landlord any defective condition known to Tenant to be defective which Landlord is required to repair and failure to so report such condition shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such condition. Landlord shall be required to commence such repairs within a reasonable period of time from receipt of Tenant's notice.

10.2. Repairs By Tenant. Tenant accepts the Premises in its present "**As-Is,**" "**Where Is**" condition, and specifically acknowledges that the Premises is suited for the uses intended by Tenant. Landlord shall not be liable for any latent or patent defects in the Premises. Except as expressly set forth in this Lease, Tenant acknowledges that Landlord has made no representation or warranty concerning the condition and state of repair of the Premises to the extent not constructed by Landlord. Tenant shall, at its own cost and expense, keep and maintain the Premises in good order and repair, promptly making all necessary repairs and replacements, including, but not limited to, all equipment and facilities and components thereof within the Premises, fixtures, walls (interior), finish work, ceilings, floors, lighting fixtures, bulbs and ballasts, utility connections and facilities within the Premises, windows, glass, doors, and plate glass, truck doors, dock levelers, bumpers, seals and enclosures, termite and pest extermination, and damage to common areas caused by Tenant, excluding only those repairs expressly required to be made by Landlord hereunder. Any and all construction, maintenance and/or repairs to be done by Tenant, its agents, employees, contractors and/or subcontractors pursuant to this Section which would be deemed Alterations, as reasonably determined by Landlord, shall comply with the requirements of this Lease. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Tenant shall maintain, and shall provide Landlord with proof thereof, an annual service maintenance contract (which shall be upon a form acceptable to Landlord and with a service provider designated by Landlord (which may be an affiliate thereof)) and any and all required permits for the fire sprinkler system (if applicable), and any other such building systems and life-safety systems, in a form and with a contractor reasonably satisfactory to Landlord. Tenant shall maintain the grounds surrounding the Premises, including the mowing of grass, care of shrubs and general landscaping. Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

10.3. The Equipment shall not be removed by Tenant, or any of its employees or agents, from the Premises, without the prior written consent of Landlord. Tenant shall be responsible for preparing and maintaining an accurate and current inventory of all such Equipment. If Tenant desires to cease use of any Equipment during the Term of this Lease and cause it to be removed from the Premises, Tenant shall so advise Landlord in writing and shall obtain written approval for moving or disposing of such Equipment from Landlord.

10.4. At the termination of this Lease, the Equipment shall be returned to Landlord in as good condition as when Tenant took possession, ordinary wear and tear excepted; provided, however, that it is understood that Tenant shall not have any obligation to maintain or repair any personal property which has become functionally obsolete, or if such personal property is not reasonably capable of being repaired because of an inability to reasonably obtain parts, or the cost of such repair or maintenance is unreasonable.

10.5. Debris and unused materials shall be promptly removed from the Premises, and the area of work shall be kept reasonably clean and free of unused materials at all times. At completion of the Lease, the area of work and the Premises shall be left without containers, Tenant's equipment, and other undesirable materials, and in an reasonably acceptable clean condition.

10.6. Tenant shall provide for all security and safety within the Premises. Any crimes or other offenses, involving damage to or theft of Landlord's property shall be reported to Landlord as property owner and lessor.

10.7. The Tenant shall be responsible, at its cost and expense, for obtaining and providing any and all other services which may be required in connection with Tenant's use or occupancy of the Premises.

11. INDEMNIFICATION BY TENANT.

11.1. Indemnification By Tenant of Landlord. Tenant shall indemnify, defend and save Landlord, its City Council, boards, commissions, officials, employees and volunteers ("**Indemnities**") harmless and shall pay all costs, expenses and reasonable attorneys' fees for all trial and appellate levels and post judgment proceedings in connection with any fines, suits, actions, damages, liability, causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Premises, and/or provision of Services or any other services by Tenant and Tenant's employees, agents, servants, guests, invitees, contractors or sublessees. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained, or incurred by Landlord by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Tenant or Tenant's employees, agents, servants, guests, invitees and sublessees. However, this indemnity shall not extend to damages due to the sole fault or negligence of Landlord or their contractors. This covenant shall survive the termination of this Lease.

11.2. Waiver. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord or its affiliates for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the Premises, the Building or the Property from any cause. Without limiting the foregoing, neither Landlord nor any of its affiliates shall be liable for and there shall be no abatement of rent for (i) any damage to Tenant's property stored with or entrusted to affiliates of Landlord, (ii) loss of or damage to any property by theft or any other wrongful or illegal act, or (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Premises or the Property or from the pipes, appliances, appurtenances

or plumbing works therein or from the roof, street or subsurface or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other tenants, occupants or other visitors to the Premises or the Property or from any other cause whatsoever, (iv) any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises, or (v) any latent or other defect in the Premises or the Property. Tenant agrees that in no case shall Landlord ever be responsible or liable on any theory for any injury to Tenant's business, loss of profits, loss of income or any other form of consequential damage. Tenant shall give prompt notice to Landlord in the event of (a) the occurrence of a fire or accident in the Premises or in the Property, or (b) the discovery of any defect therein or in the fixtures or equipment thereof.

12. INSURANCE.

12.1. Tenant's Insurance.

12.1.1. Tenant shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant.

12.1.2. Tenant shall maintain the following types of insurance with limits no less than the following as set forth below.

(i) Commercial General Liability Coverage:

\$3,000,000 per occurrence for bodily injury, personal injury and property damage. The policy shall be endorsed to provide Fire Legal Liability or Damage to Rented Premises coverage, as well as for Products and Completed Operations;

(ii) Automobile Liability Coverage:

Coverage for owned, hired, leased and rented vehicles, with limits of not less than \$1,000,000.00 for combined bodily injury and property damage, on a per occurrence basis;

(iii) Property Insurance Coverage:

Coverage against all risks of loss (excluding flood and earthquake). \$1,000,000 in Property Insurance Coverage with no coinsurance penalties shall apply and coverage shall extend to include any tenant improvements or betterments. Landlord shall be listed on all settlement checks as the Loss Payee;

(iv) Workers' Compensation Coverage:

Statutory coverage as required by the State of California, with Employer Liability coverage with limits of not less than \$1,000,000.

12.1.3. On or before the Lease Commencement Date, Tenant shall furnish Landlord with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with Section 12.1.2. Such certificates, which shall not limit Tenant's indemnifications provided in this Lease, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, Attention: Risk Manager." Tenant shall maintain in force at all times during the performance of this Lease all appropriate coverage of insurance required by this Lease with an insurance company that is acceptable to Landlord and licensed to do insurance business in the State of California. Endorsements naming the additional insureds required by Section 12.3 shall be submitted with the insurance certificates.

12.2. Subrogation Waiver. Tenant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Tenant shall look solely to its insurance for recovery. Tenant hereby grants to Landlord, on behalf of any insurer providing insurance to either Tenant or Landlord with respect to the services of Tenant herein, a waiver of any right to subrogation which any such insurer of said Tenant may acquire against Landlord by virtue of the payment of any loss under such insurance. Tenant's insurance carriers shall provide endorsements to the insurance policies accordingly.

12.3. Additional Insured. The City of Alameda, its City Council, boards, commissions, officers, employees, agents and volunteers, and any other party designated by Landlord (as determined in Landlord's sole discretion), and at Landlord's request any mortgagee of Landlord, shall be named as an additional insured under all insurance coverage's, except on workers' compensation and professional liability insurance policies. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

12.4. Notice of Cancellation. Tenant's insurance policies shall be endorsed to require the insurer to provide Landlord with at least thirty (30) days' written Notice of Cancellation.

12.5. Sufficiency of Insurance. The insurance limits required by the Landlord are not represented as being sufficient to protect Tenant. Tenant is advised to consult Tenant's insurance broker to determine adequate coverage for Tenant. Tenant's insurance policies shall be endorsed stipulating that Tenant's insurance is primary, and that the Landlord's self-insurance program and excess insurance policies shall not be called upon to contribute to a loss that should otherwise be paid by the Tenant's insurer.

12.6. Insurer Acceptability. Tenant's insurers must be domiciled in the United States of America. They must meet a minimum A.M. Best & Co. rating of A:VII and a Standard and

Poors Rating (if rated) of at least BBB. In the event that a proposed insurance company is not rated by A.M. Best & Co. or Standard and Poors, said insurance carrier must be domiciled in the State of California and approved by the Landlord's Risk Manager.

12.7. Failure to Secure. If Tenant at any time during the Term hereof should fail to secure or maintain the foregoing insurance, Landlord shall be permitted to obtain such insurance in the Tenant's name or as an agent of the Tenant and shall be compensated by the Tenant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

13. DESTRUCTION OF BUILDINGS

17.1 Partial Destruction. In the event of a partial destruction of the Building during the Term of this Lease from any cause, Landlord may elect to (in its sole discretion) repair the same, provided such repair can reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable Laws and regulations. During such period, Tenant shall be entitled to a proportionate reduction of Rent to the extent such repairs unreasonably interfere with the business carried on by Tenant in the Premises. If Tenant fails to remove its goods, wares or equipment within a reasonable time and as a result the repair or restoration is delayed, or if such damage or destruction is caused primarily by the negligence or willful act of Tenant, or its employees, invitees or agents, there shall be no reduction in Rent during such delay. In the event that (i) Landlord elects not to make such repair, or (ii) such repair cannot reasonably be made within one hundred eighty (180) days from the happening of such destruction under applicable laws and regulations, Landlord shall have the right to terminate this Lease by notifying Tenant in writing.

17.2 Total Destruction. A total destruction of the Building shall terminate this Lease. A total destruction of such Building means the cost of repairing such Building exceeds seventy-five percent (75%) of the replacement cost of such Building.

14. LABOR PROVISIONS.

14.1. Equal Opportunity. During the Term of this Lease, and with respect only to employment or employees at the Premises, Tenant agrees as follows:

14.1.1. Tenant will not discriminate against any employee of Tenant or applicant for employment because of race, color, religion, sex, or national origin. The employees of Tenant shall be treated during employment, without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

14.1.2. Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.

14.2. Convict Labor. In connection with the performance of work required by this Lease, Tenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

15. SUBMISSION OF NOTICES. All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, postage prepaid, or by reputable overnight delivery service or personal delivery as follows:

15.1. If for Tenant, addressed to Tenant at:

Friends of the Alameda Animal Shelter
1590 Fortmann Way
Alameda, CA 94501
Attention: Executive Director
Telephone: (800) 871-9012 ext. 372172 (for overnight delivery)

15.2. If for Landlord, addressed to Landlord at:

City of Alameda
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501
Attention: City Manager
Telephone: (510) 747-4700 (for overnight delivery)

With a copy to:

City of Alameda
2263 Santa Clara Avenue, Room 320
Alameda, CA 94501
Attention: City Attorney
Telephone: (510) 747-4750 (for overnight delivery)

15.3. Notwithstanding the addresses provided in subsections 15.1 and 15.2 of this section, any party may from time to time designate an alternate and/or additional address by notice given pursuant to this Section 15.

16. AUDIT. This Lease shall be subject to audit by Landlord. The Tenant shall make available to Landlord for use in connection with such audits all records, which it maintains with respect to this Lease and copies of all reports required to be filed hereunder. The Tenant will make these materials available for a period of three (3) years after termination or expiration of this Lease.

17. AGREEMENT. This Lease shall not be modified unless in writing and signed by both Landlord and Tenant. No oral statements or representation made by, for, or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease

and any exhibit hereto, or any other agreement between Landlord and Tenant, the provisions of this Lease shall take precedence.

18. **FAILURE TO INSIST ON COMPLIANCE.** The failure of Landlord to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Landlord's right to the future performance of any such terms, covenants, or conditions and Tenant's right to the future performance of any such terms, covenants, or conditions and Tenant's obligations in respect of such future performance shall continue in full force and effect.

19. **BROKERAGE.** Tenant represents and warrants that it has not had any dealings with any realtors, brokers, or agents in connection with the negotiation of this Lease. Tenant shall defend, hold harmless and indemnify the other party from and against any claims with respect to the negotiation and procurement of this Lease by any realtor, broker or agent.

20. **LIENS.** The Tenant shall promptly discharge or cause to be discharged any valid lien, right in claim, or demand of any kind on the Premises, except one in favor of Landlord, which at any time may arise or exist with respect to the Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Tenant, or should Tenant be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Landlord reserves the right to take immediate possession without any liability to Tenant or any subtenant thereof. If Tenant breaches the foregoing, Tenant and any subtenant thereof shall be responsible for any costs incurred by Landlord in securing clear title to its property.

21. **TAXES.** Tenant shall pay all Taxes (as hereinafter defined) levied or imposed against the Premises during the Term. Taxes shall mean all taxes, assessments and governmental charges, whether federal, state, county or municipal, and whether general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Rent, the Premises, the Building, any possessory interest therein, or their operation, whether or not directly paid by Landlord. Taxes shall not include income taxes, excess profit taxes, franchise taxes, or other taxes imposed or measured on or by the income of Landlord from the operation of the Premises; provided, however, that if, due to a future change in the method of taxation or assessment, any income, profit, franchise or other tax, however designated, shall be imposed in substitution, in whole or in part, for (or in lieu of) any tax, assessment or charge which would otherwise be included within the definition of Taxes, such other tax shall be deemed to be included within Taxes as defined herein to the extent of such substitution. There shall be added to Taxes the expenses of any contests (administrative or otherwise) of Taxes incurred during the taxing year, but only to the extent such contests result in a reduction of Taxes for such year or any other year during the Term. Tenant shall pay to the appropriate governmental authority any use, possessory interest, and/or occupancy tax applicable to the Premises. In the event that Landlord is required by law to collect such tax, Tenant shall pay such use and occupancy tax to Landlord as Additional Rent within ten (10) days of demand and Landlord shall remit any amounts so paid to Landlord to the appropriate governmental authority.

21.1. The interest created by this Lease may at some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in

whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6(a) of the Revenue and Taxation Code of the State of California.

21.2. Tenant shall pay the Taxes directly imposed upon it in accordance with the instructions of the taxing entity. Tenant shall pay the Taxes originally imposed upon Landlord, upon Landlord's election, either (i) annually within thirty (30) days after the date Landlord provides Tenant with a statement setting forth in reasonable detail such Taxes (which statement shall not be provided to Tenant more than sixty (60) days before such Taxes are due), or (ii) monthly in advance based on estimates provided by Landlord based upon the previous year's tax bill.

21.3. All Taxes originally imposed upon Landlord and payable by Tenant with respect to the Premises shall be prorated on a per diem basis for any partial tax year included in the Term. Tenant's obligation to pay Taxes during the last year of the Term shall survive the termination of this Lease.

22. **SURRENDER.** Upon the expiration of this Lease or its prior termination by Tenant, Tenant shall quietly and peacefully remove itself and its property from the Premises and surrender the possession thereof to Landlord. The Landlord may, in its discretion, declare any property which has not been removed from the Premises upon termination provided for above, as abandoned property upon an additional thirty (30) calendar days' notice.

23. **QUIET POSSESSION; ATTORNMENT.**

23.1. Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all the provisions of this Lease.

23.2. Except as provided in Section 24.4 below, in the event of a sale of Landlord's interest in the Premises, or assignment of this Lease by Landlord, Landlord shall be released from any liability thereafter accruing under this Lease, except that Landlord shall be obligated to pay to Tenant Annual Compensation pursuant to Section 4.1.1 for the Term and Tenant shall promptly notify Landlord if the Lease is terminated for any reason, including the expiration of the Term. Tenant shall, on request of any person or party succeeding to the interest of Landlord, attorn to such successor in interest and recognize such successor in interest as Landlord under this Lease.

24. **CERTAIN RIGHTS RESERVED TO LANDLORD.** Landlord reserves the following rights:

24.1. To hold copies of all keys and passkeys to the Premises, other than to vaults, safes, or restricted areas within the Premises.

24.2. On reasonable prior written notice to Tenant, no less than 48-hours in advance, to show the Premises to prospective tenants during the last nine (9) months of the Term, and to any

prospective purchaser, mortgagee, or assignee of any mortgage or ground lease on the Premises and to others having a legitimate interest in the Premises at any time during the Term.

24.3. At any time in the event of an emergency, and otherwise at reasonable times, to take any and all measures, including making any inspections, repairs, alterations, additions, and improvements to the Premises, as may be necessary or desirable for the safety, protection, or preservation of the Premises, or Landlord's interests, or as may be necessary or desirable in the operation or improvement of the Premises, or in order to comply with all Laws, orders, and requirements of governmental or other authorities, using reasonable efforts not to interfere with the use and occupancy of the Premises by Tenant. Landlord shall not be in default hereunder nor have any liability to Tenant, nor shall Tenant have any right to terminate this Lease or claim an offset against or reduction in Rent payable hereunder, due to any damage, annoyance or inconvenience resulting from any such inspections, repairs, alterations, additions or improvements, or the failure of Landlord to make any such inspections, repairs, alterations, additions or improvements; provided however that Landlord shall be liable for its gross negligence or willful misconduct. Tenant shall reasonably cooperate with Landlord or Landlord's agents or contractors in carrying out any such inspections, repairs, alterations, additions or improvements.

24.4. Landlord shall have a continuing right to retake possession of the Premises for any proper municipal purpose, provided that Landlord gives Tenant one (1) year's prior written notice of such intent (the "**Notice of Intent to Retake**"), during which period Landlord shall build or adapt and equip, or cause to be built or adapted and equipped, an animal shelter facility substantially similar to the Premises at a reasonably comparable location (the "**Alternative Facility**"). The Alternative Facility shall be, at a minimum, of comparable size and have comparable animal housing capacity as the Premises existing at the date of the Notice of Intent to Retake. Upon the date which is the later of one (1) year from the date of the Notice of Intent to Retake, or completion of the Alternative Facility as evidenced by a certificate of occupancy issued or signoff of completion of the work of adaptation, as applicable, Landlord and Tenant shall amend this Lease to revise the description of the Premises, including Exhibit A attached to the Lease, to reflect the Alternative Facility, and Tenant shall move its operations to the Alternative Facility and shall vacate the Premises.

25. COVENANTS OF TENANT

25.1. Use of the Premises. Tenant shall not make or permit to be made any use of the Premises or any part thereof (i) which would directly or indirectly violate any federal, state or local law, ordinance, rule or governmental regulation; (ii) which would invalidate or unreasonably increase the premium cost of any policy of insurance carried on the Premises or covering its operation (unless such increase is paid for by Tenant); or (iii) which will suffer or permit the Premises or any part thereof to be used in any manner or permit anything to be brought into or kept therein which, in the reasonable judgment of Landlord, shall unreasonably impair or interfere with any of the services required to be performed by Landlord, if any, for the Premises.

25.2. Locks. Tenant shall not change any existing locks, or attach any additional locks or similar devices to any door or window, change any locks, without providing to Landlord one

set of keys therefor. All keys must be returned to Landlord at the expiration or termination of this Lease.

25.3. Overloading. Tenant shall not overload any floor.

25.4. Machinery. Tenant shall not install or operate any machinery, refrigerating or heating device or air-conditioning apparatus in or about the Premises which would impose unreasonable substantial additional loads on the facilities of the Building.

25.5. No Obstruction. The exits, entrances, elevators and stairways of the Buildings shall not be obstructed by Tenant or used for any purpose other than for ingress to and egress from the Premises. Tenant and its employees or invitees shall not go upon the roof of the Building without Landlord's prior consent.

25.6. Applicable Rules and Regulations. Tenant shall comply with all Federal, State and local Laws, regulations and standards that are applicable or may become applicable to Tenant's activities on the Premises, including those rules and regulations promulgated by Landlord pursuant to Section 33 of this Lease. These include, but are not limited to, laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. Tenant is responsible for obtaining and paying for permits required for its operations under the Lease.

25.7. Outside Storage. Outside storage in excess of such storage existing on the Premises as of the Lease Commencement Date shall not be permitted without the express prior written authorization by Landlord. Any additional outside storage authorized by Landlord shall be properly screened.

25.8. Independent Contractor. Tenant covenants that it is an independent contractor. Nothing contained in this Lease shall be construed as making Landlord and Tenant joint venturers or partners.

26. **DEFAULT**. It shall constitute an event of default ("**Event of Default**") under this Lease if any of the events describes in the following subsections occurs.

26.1. Tenant fails to pay when due Base Rent, Additional Rent, or other amounts due hereunder and such failure continues for a period of five (5) days after the due date.

26.2. Tenant assigns or sublets, or purports to assign or sublet the Premises or any part thereof other than in the manner and upon the conditions set forth herein.

26.3. Tenant fails to perform or observe any of its other obligations, covenants, or agreements hereunder within ten (10) working days after written notice of any such failure has been given by or on behalf of Landlord, or, if more than ten (10) working days is required to cure such failure, within said ten (10) working days, Tenant shall advise Landlord in writing of Tenant's intended course of action to cure and the estimated date as to when said action will be completed, and if Tenant fails to commence such cure as promptly as practical as stated in its notice to Landlord and thereafter diligently to pursue such cure and thereafter fails to diligently pursue such a cure and complete such cure within a reasonable time thereafter.

26.4. Tenant liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy, bill in equity, or other proceedings for the appointment of a receiver or other custodian for its property, or if proceedings for reorganization or composition with creditors under any law are instituted by or against Tenant or if any levy or sale or execution of any kind is made upon or of any property of Tenant in the Premises.

26.5. Tenant abandons or vacates the Premises or Tenant removes or attempts to remove or manifests an intention to remove Tenant's goods or property from or out of the Premises otherwise than in the ordinary and usual course of business.

26.6. Tenant fails to vacate the Premises at the end of the Term of this Lease unless this Lease is otherwise renewed or extended.

27. **LANDLORD'S REMEDIES**

27.1. If an Event of Default hereunder shall have occurred, Landlord may, at its option, exercise any one or more of the following remedies:

27.1.1. Terminate Tenant's right to possession of the Premises by written notice by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event, Landlord shall be entitled to recover from Tenant:

(1) the worth at the time of the award of any unpaid rent which had been earned at the time of such termination; plus

(2) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(3) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus

(4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom (including, without limitation, the cost of recovering possession of the Premises, expenses of reletting including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and real estate commissions actually paid and that portion of the leasing commission paid by Landlord and applicable to the unexpired portion of this Lease); plus

(5) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

As used in Subsections (1) and (2) above, the "**worth at the time of the award**" shall be computed by allowing interest at the lesser of ten percent (10%) per annum, or the maximum rate

permitted by law per annum. As used in Subsection (3) above, the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

27.1.2. Continue this Lease in full force and effect, and the Lease will continue in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect Rent when due. During the period Tenant is in default, Landlord may enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord reasonably incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the rent Landlord receives from any reletting. In no event shall Tenant be entitled to any excess rent received by Landlord. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

27.1.3. Cause a receiver to be appointed to collect Rent. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate the Lease.

27.1.4. Cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, reasonably pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the lesser of ten percent (10.00%) per annum, or the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional Rent.

27.2. The foregoing remedies are not exclusive; they are cumulative, in addition to any remedies now or later allowed by law, to any equitable remedies Landlord may have, and to any remedies Landlord may have under bankruptcy laws or laws affecting creditors' rights generally. The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than a failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

27.3. No early expiration or termination of this Lease (except as expressly provided herein) and no repossession of the Premises or any part thereof shall relieve Tenant of its liabilities and obligations to pay Rent hereunder, all of which shall survive such expiration,

termination or repossession, and Landlord may, at its option, sue for and collect all Rent and other charges due hereunder at any time as when such charges accrue.

27.4. In the event that Landlord commences suit for the repossession of the Premises, for the recovery of Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred in connection therewith, including reasonable attorneys' fees. In the event that Tenant commences suit because of the breach of any covenant herein contained on the part of Landlord to be kept or performed, and a breach shall be established, Landlord shall pay to Tenant all expenses incurred in connection therewith, including reasonable attorneys' fees.

28. **SEVERABILITY**. If any of the provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law.

29. **HOLDING OVER**. Should Tenant hold over and remain in possession of the Premises after the expiration of this Lease, without the written consent of Landlord, such possession shall be as a month-to-month tenant. Unless Landlord agrees otherwise in writing, Base Rent during the holdover period shall be payable in an amount equal to one hundred fifty percent (150%) of the Base Rent paid for the last month of the term hereof until Tenant vacates the Premises. All other terms and conditions of this Lease shall continue in full force and effect during such holdover tenancy, which holdover tenancy shall be terminable by either party delivering at least one (1) month's written notice, before the end of any monthly period. Such holdover tenancy shall terminate effective as of the last day of the month following the month in which the termination notice is given.

30. **ESTOPPEL CERTIFICATES, FINANCIAL STATEMENTS AND RECORDS**

30.1. **Estoppel Certificate**. Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior request by Landlord, execute, acknowledge and deliver to Landlord, or to such other persons who may be designated in such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and, if so, the dates to which the rent and any other charges have been paid in advance, and such other items requested by Landlord, including without limitation, the lease commencement date and expiration date, rent amounts, and that no offsets or counterclaims are present. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser or encumbrancer (including assignee) of the Premises.

30.2. **Financial Statements**. Upon the request of Landlord, Tenant shall deliver to Landlord such financial information regarding Tenant, as may reasonably be required to establish Tenants' creditworthiness, including without limitation, audited financial reports. All financial information provided by Tenant to Landlord shall be held in confidence and may not be

used or disclosed by the recipient except for the purpose of determining Tenants' creditworthiness in connection with Tenants' obligations under this Lease.

30.3. **Records and Public Comments.** Tenant shall maintain, and make available for viewing by members of the public upon request, its current annual operating budget, and most recent minutes of Board of Directors meetings for the 12-month period preceding any such request, provided, however, Tenant may redact certain sensitive data, such as confidential personnel discussions, from such minutes. Tenant shall also accept written comments from the public regarding its activities and services, which shall be circulated to members of its Board of Directors.

31. **SHORT FORM OF LEASE.** Tenant agrees to execute, deliver and acknowledge, at the request of Landlord, a short form of this Lease satisfactory to counsel for Landlord, and Landlord may in its sole discretion record this Lease or such short form in the County where the Premises are located. Tenant shall not record this Lease, or a short form of this Lease, without Landlord's prior written consent.

32. **SIGNS.** Tenant shall not place any sign upon the Premises without Landlord's prior written consent (all such signage shall comply with Landlord's signage design criteria, as such exists from time to time). In addition, the style, size, materials and attachment method of any such signage shall be subject to Landlord's prior written consent. The installation of any sign on the Premises by or for Tenant shall be subject to the provisions of this Lease. Tenant shall maintain any such signs installed on the Premises. Unless otherwise expressly agreed herein, Landlord reserves the right to install, and all revenues from the installation of, such advertising signs on the Premises, including the roof, as do not unreasonably interfere with the conduct of Tenant's business.

33. **RULES AND REGULATIONS.** Tenant shall faithfully observe and comply with the nondiscriminatory rules and regulations that Landlord shall from time to time promulgate. Landlord reserves the right from time to time to make all nondiscriminatory modifications to said rules. The additions and modifications to those rules shall be binding upon Tenant upon delivery of a copy to them to Tenant (a copy of the present Rules and Regulations is attached hereto as Exhibit B). Landlord shall use its reasonable efforts to enforce compliance with such rules, but shall not be responsible to Tenant for the nonperformance of any of said rules by other tenants or occupants.

34. **LIMITATION ON LIABILITY.** In consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord: (1) Tenant's sole and exclusive recourse shall be against Landlord's interest in the Premises and Tenant shall not have any right to satisfy any judgment which it may have against Landlord from any other assets of Landlord; (2) no member, partner, stockholder, director, officer, employee, beneficiary or trustee (collectively, "**Partner**") of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over Landlord); (3) no service of process shall be made against any Partner of Landlord (except as may be necessary to secure jurisdiction over Landlord); (4) no Partner of Landlord shall be required to answer or otherwise plead to any service of process; (5) no judgment will be taken against any Partner of Landlord; (6) any

judgment taken against any Partner of Landlord may be vacated and set aside at any time nunc pro tunc; (7) no writ of execution will ever be levied against the assets of any Partner of Landlord; and (8) these covenants and agreements are enforceable both by Landlord and also by any Partner of Landlord.

35. **ATTORNEYS' FEES.** If Tenant or Landlord shall be in breach or default under this Lease, such party (the "**Defaulting Party**") shall reimburse the other party (the "**Non-Defaulting Party**") upon demand for any costs or expenses that the Non-Defaulting Party incurs in connection with any breach or default of the Defaulting Party under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered, a reasonable sum as attorneys' fees and costs. The losing party in such action shall pay such attorneys' fees and costs. Tenant shall also indemnify Landlord against and hold Landlord harmless from all costs, expenses, demands and liability Landlord may incur if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant against any third party, or by any third party against Tenant, or by or against any person holding any interest under or using the Property by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord, or at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs Landlord incurs in any such claim or action.

36. **COUNTERPARTS.** This Lease may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Each party may execute a facsimile counterpart signature page to be followed by an original counterpart. Each such facsimile counterpart signature page shall constitute a valid and binding obligation of the party signing such facsimile counterpart.

37. **EXECUTION.** Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF, Landlord and Tenant have respectively signed this Lease as of the day and year first above written.

LANDLORD:

CITY OF ALAMEDA, a municipal corporation organized and existing under the laws of the State of California

By _____
John A. Russo
City Manager

TENANT:

FRIENDS OF THE ALAMEDA ANIMAL SHELTER, a California nonprofit public benefit corporation

By Nancy E. Bianchi
Name: Nancy Evans Bianchi
Title: President

RECOMMENDED FOR APPROVAL:

Name: _____
Title: _____

Approved as to form:

Donna Mooney,
Acting City Attorney

EXHIBITS

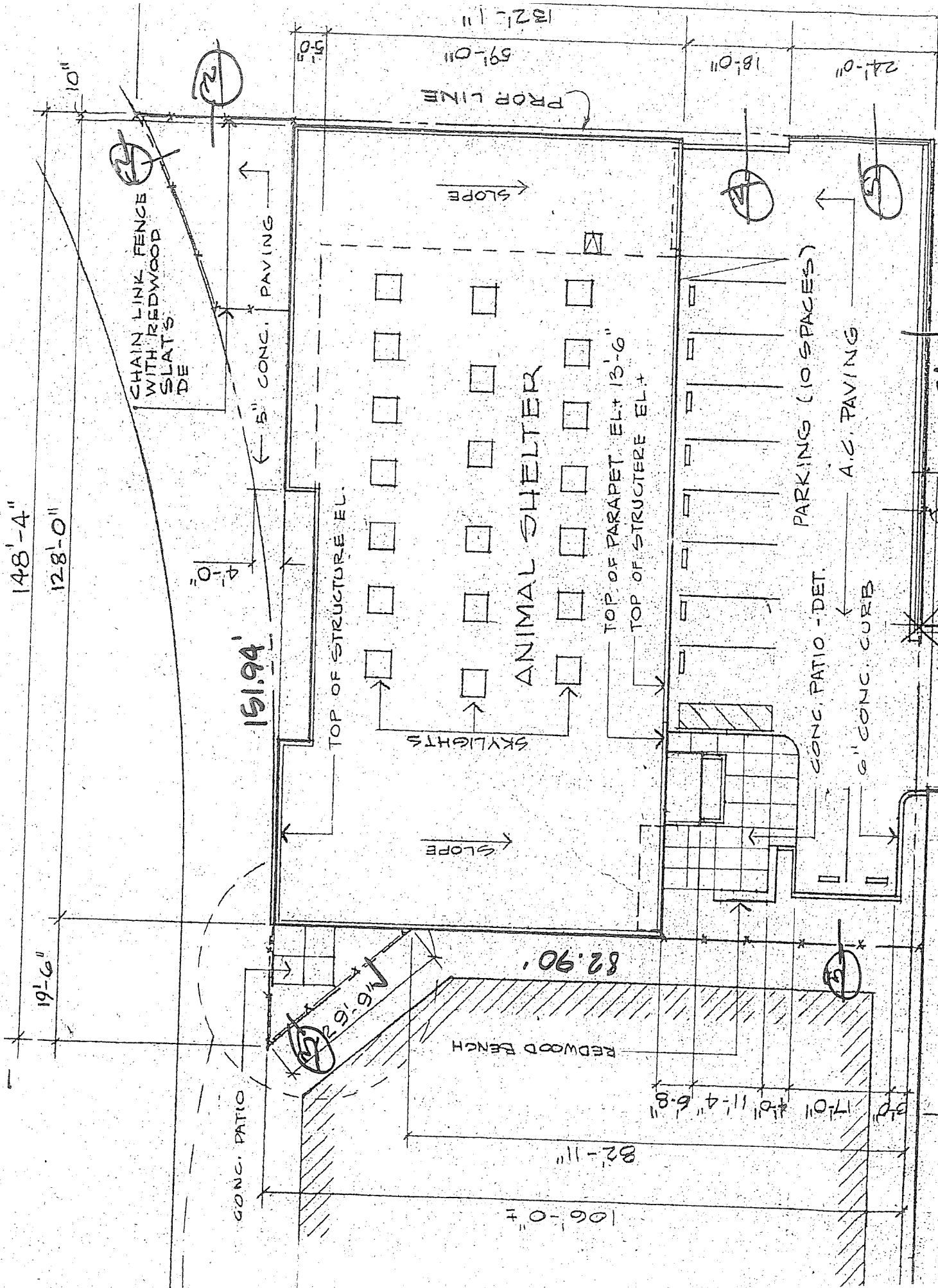
- Exhibit A Premises (Depiction of Building, Land and Parking Area)
- Exhibit A-1 Equipment (List of Equipment)
- Exhibit B Rules and Regulations

EXHIBIT A

PREMISES

(DEPICTION OF BUILDING, LAND, PARKING AREAS)

[Attached]



148'-4"

128'-0"

19'-6"

151.94'

CONC. PATIO

TOP OF STRUCTURE EL.

SKYLIGHTS

ANIMAL SHELTER

TOP OF PARAPET EL. 13'-6"

TOP OF STRUCTURE EL. ±

REDWOOD BENCH

PARKING (10 SPACES)

CONC. PATIO - DET.

A.C. PAVING

6" CONC. CURB

PROP LINE

SLOPE

SLOPE

CHAIN LINK FENCE
WITH REDWOOD
SLATS
DE

5" CONC. PAVING

4'-0"

59'-0"
132'-11"

18'-0"

24'-0"

106'-0"

82'-11"

17'-0" 4'-0" 11'-4" 6'-8"

82.90'

146.94'

ANIMAL SHELTER - FRONT PHOTO

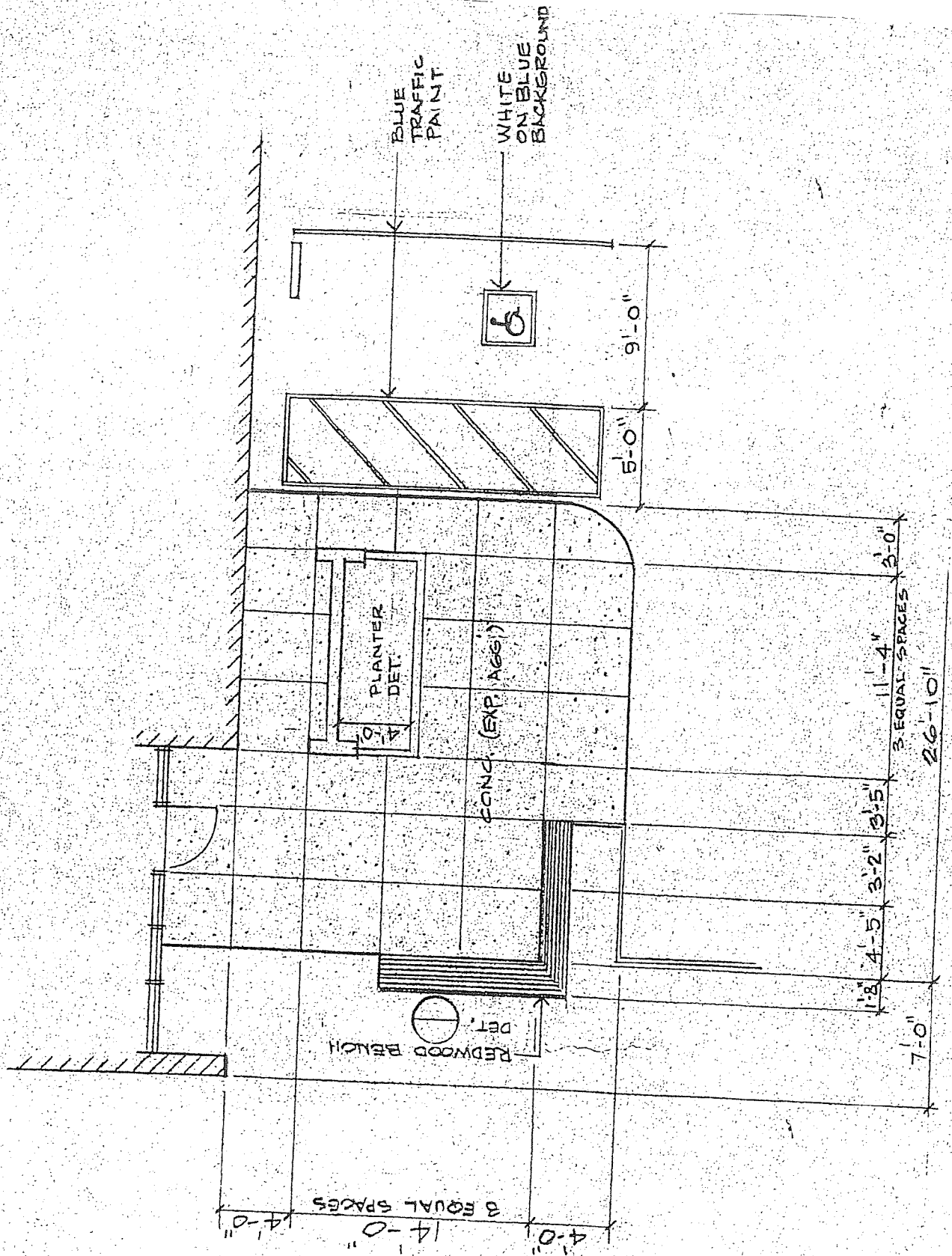


EXHIBIT A-1
EQUIPMENT
(LIST OF EQUIPMENT)
[Attached]

Animal Shelter's Fixed Assets Inventory

	Assets ID#	Description	Cost	Date acquired
#1	#002427	MTL Desk w/ return	\$ 570.00	1/1/1984
#2	#002436	4-Draws file cabinet - letter size	\$ 285.00	1/1/1984
#3	#002437	4-Draws file cabinet - letter size	\$ 285.00	1/1/1984
#4	#002446	Wood conference table	\$ 475.00	1/1/1984
#5	#002447	Wood bookcase	\$ 238.00	1/1/1984
#6	#002458	Chair w/ arms	\$ 238.00	1/1/1984
#7	#002461	Animal cage	\$ 1,227.00	1/1/1986
#8	#002462	Trash cart	\$ 342.00	1/1/1984
#9	#002463	Trash cart	\$ 342.00	1/1/1984
#10	#002464	GE refrigerator	\$ 570.00	1/1/1984
#11	#002469	3 Seater seating unit	\$ 428.00	1/1/1984
#12	#004726	Cash register system	\$ 12,399.00	12/20/1995
#13	#010068	Animal Shelter building	\$ 7,346.00	1/1/1936
#14	#010608	GMC carry container	\$ 730.00	3/1/1990
#15	#06156	Slide-in animal transport mod	\$ 11,445.00	6/30/2005
#16	#06157	Slide-in animal transport mod	\$ 15,160.00	6/30/2005
#17	#06316	CCTV Security System	\$ 23,932.00	1/22/2008
#21	#06318	Konica C353 copier	\$ 10,873.00	5/19/2008
#23	#06322	CCTV security cameras	\$ 11,934.00	7/24/2008

EXHIBIT B

RULES AND REGULATIONS

1. [INTENTIONALLY DELETED.]
2. Landlord may require the provision of security systems or personnel to maintain security and safety within the Building.
3. Tenant shall not make any use of the Building or property which in any manner constitutes or results in any public or private nuisance within the meaning of California Civil Code Section 3479 *et seq.*
4. The entries and corridors shall not be obstructed by any tenant, or used for any other purpose than ingress or egress to and from its respective offices.
5. Freight, furniture, business equipment, merchandise and bulky matter of any description ordinarily shall be delivered to and removed from the demised Premises only through the service entrances and corridors, but special arrangements will be made for moving large quantities or heavy items of equipment and supplies into or out of the Building.
6. All entrance doors in the Premises shall be left locked when the Premises are not in use.
7. Tenant shall not attach or permit to be attached additional locks or similar devices to any door, transom or window of the Premises; change existing locks or the mechanism thereof; or make or permit to be made any keys for any door thereof other than those provided by Landlord, without providing to Landlord one set of keys therefor.
8. The drinking fountains, lavatories, water closets and urinals shall not be used for any purpose other than those for which they were installed.
9. No awnings or other projections over or around the windows or entrances of the Premises shall be installed by any tenant without the prior written consent of the Landlord.
10. [INTENTIONALLY DELETED.]
11. Landlord reserves the right by written notice to Tenant, to rescind, alter or waive any rule or regulation at any time prescribed for the Building when, in Landlord's reasonable judgment, it is necessary, desirable or proper for the best interest of the Building.
12. The Tenant shall not exhibit, sell or offer for sale on the Premises or in the Building any article or thing except those articles and things essentially connected with the stated use of the Premises by the Tenant without the advance consent of the Landlord.
13. The Tenant shall never use any picture or likeness of the Building in any circulars, notices, advertisements or correspondence without the Landlord's consent, which consent shall not be unreasonably withheld.

14. The Tenant shall cooperate fully with the Landlord to assure the effective operation of the Building's air conditioning system. If Tenant shall so use the Premises that noxious or objectionable fumes, vapors and odors exist beyond the extent to which they are discharged or eliminated by means of the flues and other devices contemplated by the various plans, specifications and leases, then Tenant shall provide proper ventilating equipment for the discharge of such excess fumes, vapors and odors so that they shall not enter into the air conditioning system or be discharged into other vents or flues of the Building or annoy any of the tenants of adjacent properties. The design, location and installation of such equipment shall be subject to Landlord's approval.

15. [INTENTIONALLY DELETED.]

16. There shall not be used or kept anywhere in the Building by any tenant or persons or firms visiting or transacting business with a tenant any hand trucks, except those equipped with rubber tires and side guards.

17. No curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of the Premises without the prior written consent of the Landlord.

18. No sign, advertisement notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside or inside of the Premises or of the Building, without the prior written consent of Landlord. In the event of any violation of the foregoing by Tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to Tenant.

19. [INTENTIONALLY DELETED.]

20. [INTENTIONALLY DELETED.]

21. [INTENTIONALLY DELETED.]

22. Tenant's contractors shall, while in the Building or elsewhere in the complex of which the Building forms a part, be subject to and under the control and direction of the Tenant.

23. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith at Tenant's expense cause the same to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord

24. Excepting bottled water utilized by Tenant, no water cooler, air conditioning unit or system or other apparatus shall be installed or used by Tenant without the written consent of Landlord.

25. Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate visibly marked (at all times properly operational) fire extinguisher next to any duplicating or

photocopying machine or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

26. Tenant shall not use the name of the Building for any purpose other than as the address of the business to be conducted by Tenant in the Premises, nor shall Tenant use any picture of the Building in its advertising, stationery or in any other manner without the prior written permission of Landlord, which permission shall not be unreasonably withheld. Landlord expressly reserves the right at any time to change said name without in any manner being liable to Tenant therefor.