

ALAMEDA ANIMAL SHELTER SERVICES AGREEMENT

This Alameda Animal Shelter Services Agreement ("**Services Agreement**") dated as of May ___, 2017, is made by and between the City of Alameda, a municipal corporation ("**City**") and Friends of the Alameda Animal Shelter, a California non-profit public benefit corporation ("**Contractor**") with reference to the following.

RECITALS

WHEREAS, the City has determined that it can best serve the needs of the residents of Alameda with respect to the operation of the Alameda Animal Shelter and the provision of certain animal care services associated therewith (the "**Services**") by contracting with Contractor to manage and implement said services as set forth below.

WHEREAS, Contractor represents and warrants that it is fully qualified to perform such Services by virtue of its specialized experience and the education and expertise of its principals and employees and that Contractor has been providing said Services pursuant to the terms of that certain Lease Agreement (Alameda Animal Shelter), dated 2011, ("**2011 Lease**") between Contractor and the City;

WHEREAS, Contractor is willing to continue to provide said Services in exchange for the considerations set forth below; and,

WHEREAS, by Resolution No. ____, adopted ____, the City Council of the City of Alameda authorized the execution of this Service Agreement:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and agreements set forth below, the adequacy of which is mutually acknowledged, the Parties agree as follows.

AGREEMENT

1. Term.

1.1 Initial Term. The term of this Services Agreement ("**Term**") commences on July 1, 2017 ("**Commencement Date**") and terminates at midnight on June 30, 2019 (the "**Expiration Date**"), unless sooner terminated as hereinafter provided. The Term of this Services Agreement shall commence and expire concurrently with the term of the Lease, as defined below.

1.2 Extension Term. The City Council may, in its sole and absolute discretion, offer Contractor a two (2) year extension of the Term of this Services Agreement (the "**Extension Term**") upon same terms and conditions set forth herein, including the Annual Compensation and adjustments thereof as specified at Section 4.1 below. Said offer shall be made, if at all, in writing not less than ninety (90) days before the expiration of the initial Term (the "**Extension Offer**"). Contractor may accept the extension offer by delivering written notice thereof to the City within thirty (30) days of the receipt of the Extension Offer. If Contractor fails to unconditionally accept the Extension Offer, the Term of this Services Agreement shall expire on the Termination Date specified above.

2. Lease of Alameda Animal Shelter.

Contractor currently occupies the building, land and parking areas located at 1590 Fortmann Way, commonly known as the Alameda Animal Shelter (the “**Shelter**”) pursuant to the 2011 Lease. The parties have negotiated the terms of a new lease (the new lease is referred to herein as the “**Lease**”) superseding and replacing the 2011 Lease. Pursuant to the City Charter, the Lease must be approved by the City Council by means of an ordinance. Until such ordinance has been adopted and becomes effective, Contractor’s occupancy of the Premises shall continue to be governed by the 2011 Lease except that Article 4 (Use of Premises) of the 2011 Lease is superseded by Articles 3 (Scope of Services) and 4 (Compensation for Services) of this Services Agreement. As of the Commencement Date of the Lease, the rights and obligations of the parties with regard to Contractor’s use and occupancy of the Shelter shall be governed the terms of the Lease. To the greatest extent practicable, the terms and conditions of this Services Agreement and those of the Lease are to be interpreted as consistent and in harmony. In the event of a direct conflict with regard to Contractor’s use and occupancy of the Shelter, the Lease shall control.

3. Scope of Services.

The Services specified in Sections 3.1 through 3.10 below, are the core services for which the City will pay Contractor in accordance with Section 4.1 and 4.2 below. Contractor may provide additional services, the cost of which may be paid for by donations, grants or other fundraising activities, or other sources, but for which the City will have no obligation to pay. It is understood and agreed that, effective as of July 1, 2017, the City, and not Contractor, shall collect and retain animal licensing fees. Contractor shall cooperate with the City in transitioning to this new system and in developing procedures for the licensing and collection of fees for adopted and other animals released from the Shelter, as set forth in Section 3.9.1 below.

3.1 Shelter Services: General. The Services to be provided by Contractor at the Shelter will include, but not be limited to, sheltering abandoned, unwanted or stray animals, medical care, adoption of animals, pre-adoption spay and neuter of cats and dogs, licensing and euthanasia of animals. All animals housed in the Shelter shall be treated with care and provided a clean, comfortable and healthy environment. When used in this Services Agreement, the terms “**animal**” or “**animals**” shall mean 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 livestock, insects, arachnids, crustaceans, and fish.

3.1.1 Standards. Contractor shall maintain and adhere to evolving best practice protocols regarding Shelter admission and intake procedures, care and welfare of animals, employee conduct and operations. Contractor shall be familiar with, and meet or exceed when possible, the “Guidelines for Standards of Care in Animal Shelters,” published by Association of Shelter Veterinarians. Contractor’s employees shall have training and/or experience appropriate to their positions.

3.1.2 Operational Assessment. During the first one hundred and eighty (180) days of the Term, the City will engage the American Humane Association (“AHA”) to perform an operational assessment of the Shelter and the Services provided by Contractor pursuant to this Services Agreement. The cost for such assessment shall be paid by the City but Contractor shall fully cooperate with the AHA including providing it with full access to the Shelter and all records and other documents as may be reasonably requested to enable it to perform the operational assessment. Upon completion of the assessment, the City shall cause the same (the “**Operational Assessment Report**”) to be delivered to Contractor. Thereafter, Contractor shall use its best efforts to implement any changes or other recommendations set forth in the Operational Assessment Report, as long as such changes do not materially increase Contractor’s cost of operating the Shelter. If any such proposed changes would materially increase Contractor’s cost of operating the Shelter, the parties shall meet and confer to determine if this Service Agreement should be amended to address such changes and implementation costs.

3.1.3 Hours. Contractor agrees that the Shelter shall be open to the public during the hours of 11:00 a.m. to 5:00 p.m., Thursdays through Sundays, and 11:00 a.m. to 7:00 p.m. on Wednesdays. At Contractor’s discretion, the Shelter may be closed to the public on Mondays and Tuesdays and on holidays. Contractor may expand or modify the above hours, as its management deems appropriate, so long as the Shelter remains open to the public at least one evening per week and on the weekends. The foregoing notwithstanding, the Shelter shall be open to the public for a minimum of thirty two (32) hours per week.

3.2 Animal Intake

3.2.1 Animals from Animal Control. Contractor shall accept all animals that come into the custody of, or are impounded by, the City. City and Contractor shall coordinate to adopt standard operating procedures for the transfer of animals from Animal Control to Contractor.

3.2.2 Animals from residents. Contractor shall accept all owner-surrendered animals from residents of the City of Alameda, California (the “**Service Area**”). Contractor may, but shall not be required to, accept for treatment or euthanasia other owner-surrendered animals, including, wild animals, and livestock. However, under no circumstances shall livestock or food animals be housed overnight at the Shelter.

3.2.3 Open Intake. Contractor will operate the Shelter as an “Open Intake” shelter, meaning that no animal will be turned away due to its species or breed. Dogs shall be accepted without breed-specific barriers.

3.3 Animal Care: Policies and Procedures.

3.3.1 Assessment. Every animal entering the Shelter shall be assessed in regard to physical condition, medical condition, medical needs and behavioral observations. All dogs and cats are to be scanned for the presence of a microchip and, if found, Contractor shall promptly initiate a search for the owner through the microchip vendor.

3.3.2 Vaccination. All animals shall be vaccinated, including intranasal Bordetella and the DHPP for dogs, and FVRCP for cats. Animals shall also be treated for fleas, intestinal parasites and groomed as necessary for the animal's health.

3.3.3 Veterinary Services. Veterinary services to perform necessary medical treatments may be provided by off-site veterinarians. Contractor shall rotate such off-site referrals between and among available veterinarians in the City of Alameda. Contractor shall use best efforts to recoup such fees from the owners of the animals so treated.

3.3.4 Holding Requirements. Animals will be assigned kennel housing with consideration for species, sex, whether fertile, medical conditions, behavior and temperament. All such kennel housing shall be maintained indoors. Animals will be held in accordance to law and eligibility for adoption, transfer to other animal welfare agencies or placement with a qualified Rescue Group. For purposes herein, "**Rescue Group**" shall mean a non-profit, 501(c)(3) organization whose mission includes finding permanent homes for animals in accordance with applicable law. A minimum holding requirements are as follows:

- A. Dogs that are unlicensed or for which the owner is unknown will be held for 72 hours before being eligible for adoption or transfer.
- B. If a dog's owner is known, the owner must be notified within 24 hours and the dog must be held for 10 days after notification to the owner before being eligible for adoption or transfer.
- C. Holding requirements for cats and other animals is 72 hours, the same for unlicensed dogs.
- D. Animals classified as potentially dangerous or under legal holds are subject to additional holding requirements.

The foregoing notwithstanding, kittens, puppies and other young animals will be placed in foster settings as soon as possible.

3.3.5 Quarantine. An animal that is dangerous or potentially carrying a highly infectious disease that may threaten the health and safety of other animals or humans will be accepted and placed into quarantine. Contractors shall document

and monitor all animals under quarantine and, when necessary, obtain a lab sample of the animal and prepare the necessary paperwork to accompany the sample to the Health Department for testing. Contractor shall use its best efforts to recover from the owner, upon release of the animal, any extraordinary costs incurred as a result of the quarantine. Costs so recovered may be retained by Contractor to be used for the operation of the Shelter.

3.5 Dead Animals. Contractor shall accept custody of dead animals from Animal Control or from the community, and shall be responsible for disposing of the same. City and Contractor shall coordinate to adopt standard operating procedures for the transfer of dead animals from Animal Control to Contractor.

3.6 Service Area. The Shelter shall be operated to meet the animal services needs of the Service Area, the City of Alameda.

3.7 After-Hours Drop-Off Boxes. Contractor shall maintain after-hours drop-off boxes and shall take custody of animals dropped off in such boxes.

3.8 Euthanasia and Vivisection. Contractor shall not euthanize any animal for time or space, and shall make every effort to avoid euthanasia unless medically necessary and/or behaviorally warranted for the safety of the public. An average live release rate for dogs and cats of 90% or higher shall remain the goal of Contractor. Contractor shall follow a clear protocol on the use of euthanasia, up to and including the approval of the Executive Director of Contractor for each individual case. Euthanasia using the most modern and humane methods available is to be carried out under the provisions established by California law. City and Contractor shall not permit the release of an animal to an agency for research or vivisection purposes.

3.9 Adoption, Placement or Transfer of Animals. Contractor shall make every reasonable effort to identify each animal's owner and return the animal to its owner prior to release of the animal through adoption, placement with a Rescue Group or transfer to an animal welfare agency.

3.9.1 Spayed, Neutered, Microchip and License. Prior to, and as a condition for adoption, cats and dogs shall be spayed or neutered and microchipped. The cost of such services shall be included in Contractor's adoption fees. Contractor shall also require all cats and dogs, whether released to their prior owners or released for adoption, to be licensed in accordance with City policies and procedures, with all licensing fees, whether collected by Contractor or the City, being property of the City.

3.9.2 Adoption Outreach. Adoption shall be promoted through a variety of outreach strategies including advertising, internet, mobile and off-site events. Contractor shall not target for adoption or transfer, or otherwise transfer any

animal to another animal welfare agency, foster family or placement with a Rescue Group that would euthanize the transferred animal.

3.10 Community Partnership and Involvement. Partnerships with community groups, veterinary service providers, other animal welfare agencies and Rescue Agencies may be developed and maintained by Contractor.

3.10.1 Volunteer Program. Contractor shall maintain an active volunteer program. Participation in the program will be encouraged, and recruitment, screening, training and retention of fostering and shelter and adoption volunteers will be provided by Contractor. A volunteer policy manual or guidebook for the management of the program shall be created and maintained by Contractor.

3.10.2 Alameda Point Collaborative. Contractor is encouraged to work with the staff and Board of Directors of the Alameda Point Collaborative ("**Collaborative**") to recruit residents of the Collaborative to work for Contractor on a full or part-time basis in accordance with the terms of the Memorandum of Understanding between Contractor and the Collaborative. Contractor shall use good faith efforts to employ two (2) full or part time employees who live in the Collaborative.

4. Compensation for Services.

4.1 Annual Compensation. For the first twelve (12) months of the Term of this Services Agreement, the City shall reimburse Contractor in an amount not to exceed Eight Hundred Four Thousand Three Hundred Dollars (\$804,300) for the expenses identified in the FAAS Budget Proposal – FY 2017/18; Expenses ("**Budget**") attached hereto as **Exhibit A** (the "**Not to Exceed Amount**"). Included in the Not to Exceed Amount is the salary and benefits for seven full-time and five part-time employees, in accordance with the Employment and Compensation Schedule attached hereto as **Exhibit B**. Included in the Not to Exceed Amount is up to Twenty Five Thousand Dollars (\$25,000) which will be paid by the City to Contractor to match any grant(s) received by Contractor during any year of the Term ("**Matching Amount**"). The Matching Amount shall be paid upon documentation of the receipt of such grant(s) in accordance with Section 4.2 below. The Not to Exceed Amount shall, subject to City Council appropriation of adequate funds, be adjusted upward annually, effective as of the 13th month of the Term, and for each year of any Extension Term, by the Bay Area Consumer Price Index as 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 escalation. If Contractor desires, it

may request compensation in excess of the Not to Exceed Amount by submitting its request in writing to the City Council for its review and consultation.

4.2 Documentation of Services. City shall pay to Contractor for Services that are actually performed in accordance with this Services Agreement, in a total cumulative amount not to exceed the Not to Exceed Amount as set forth at Section 4.1 above and not to exceed each respective line item amount for those Expenses identified as the City's obligation in the Budget attached as Exhibit A. Except as otherwise specified in section 4.3 below, payment shall be in arrears and shall be made no more frequently than once a month (each a "**Monthly Disbursement**"). To be eligible for payment, Contractor shall submit monthly invoices to the City Finance Department. Such monthly invoices shall clearly describe the Services rendered during the period covered by the invoice, including amounts paid to and the names of third party vendors and contractors. Said invoices shall also clearly identify the specific line items from Exhibit A (Payroll; Shelter Expenses; Occupancy; Insurance; Professional Services; or Operating/ Administrative) against which the expenses are to be applied. At the City's request, Contractor shall also provide receipts or invoices from such vendors or contractors. For purposes of receiving all or any portion of the Matching Amount, such invoices shall also identify any grant money received by Contractor during the period covered by the invoice and provide reasonable documentation of the same. If by the end of the twelfth (12th) month of any year during the Term or any Extension Term, contractor has not documented receipt of at least \$25,000 in grant money (or such increased amount pursuant to such annual adjustment forth in section 4.1 above), the City may withhold, from its final Monthly Disbursement, the amount of any such shortfall. Invoices shall be submitted within thirty (30) days after the end of the month covered by the invoices. the City shall pay any such properly submitted and documents invoice within thirty (30) days after receipt thereof.

4.3 Initial Advance. The foregoing notwithstanding, within five (5) business days of the effective date of this Services Agreement, the City shall advance to Contractor the sum of Sixty Seven Thousand, Twenty-five Dollars (\$67,025) as an advance against the total Not to Exceed Amount. Thereafter, the City shall deduct the amount of Five Thousand, Five Hundred, Eighty Five and 42/100 Dollars (\$5,585.42) from each properly documented Monthly Disbursement amount, such that the total amount disbursed by the City for the first twelve (12) months of the Term does not exceed Eight Hundred, Four Thousand, Three Hundred Dollars (\$804,300).

4.4 Additional Sources of Revenue. Contractor is encouraged to seek additional funds through grant applications, private donations, shelter fees, veterinary services, adoption revenue and fundraising activities, which amounts collected shall be income to Contractor, over and above the Not to Exceed Amount specified above. To assist Contractor, the City shall reasonably make available, at no cost to Contractor, any grant contractor engaged by the City to assist in identifying potential grant opportunities. Income garnered through such private fundraising and fees will be spent according to funding restrictions and objectives set forth by Contractor's Board of Directors.

4.5 Early Termination. If, at any time during the Term of this Services Agreement, the City Council fails to appropriate sufficient funds for the performance of the Services required hereunder, as defined in sections 3.1 through 3.10 above, this Services Agreement may be terminated by the City by the giving of not less than ninety (90) days prior written notice to Contractor specifying the termination date. Upon receipt of such notice, Contractor shall continue to perform the Services through the date of termination. City shall pay Contractor for all Services actually performed in accordance with this Services Agreement through the termination effective date. If the City Council appropriates less than the full amount of funds that would otherwise be required hereunder, Contractor may, by written notice to City delivered not less than sixty (60) days after receipt of the City's notice of termination, agree to continue to perform the Services required hereunder for the amount of compensation so appropriated by the City Council.

5. Reporting Requirements.

5.1 Quarterly Reports. Quarterly reports on Contractor's activities and disposition of animals will be kept and submitted to the City Manager within thirty (30) days after the quarter reported on. Such reports will include the following data for dogs, cats and other animals:

- Number of impounded animals received from animal code enforcement and field services
- Number of stray animals accepted from residents of Alameda
- Number of animals returned to owners
- Number of animals adopted
- Number of animals transferred out of the Alameda Animal Shelter to other animal welfare agencies or placed with rescue groups
- Number of animals that are stolen
- Number of animals that are dead upon arrival
- Number of animal that died-while in care of the shelter
- Number of animals that are euthanized and the reason for euthanasia
- Live Release Rate
- Number of volunteer hours contributed
- Progress on implementing Operations Assessment Report recommendations
- Amount of adoption fees collected
- Amount of animal license fees collected
- Number of grants applied for and amount of grant money received
- Summary of donations received
- Quarterly income statements, balance sheets, cash flow statements, and budget to actual reports, prepared in accordance with generally accepted accounting principles.

5.2 Mid-Year Report. Contractor shall provide a written mid-year status report and an annual comprehensive report to the City Council. Such reports shall contain all information necessary for the City Council to determine the quantity and quality of all services performed under this Agreement. Said Reports shall also include names and titles of full and part time employees whose compensation is included in the Employee Reimbursement Amount as specified in Section 4.1 and the Employment and Compensation Schedule. Reports shall be in a form specified by the City Manager.

5.3 Financial Accounting. Contractor shall maintain data management and use of appropriate software to allow for effective data management in cooperation with the City. The parties agree that Quick Books Software is appropriate for these purposes. Financial accounting of Contractor shall be conducted through an annual financial audit in accordance with non-profit best practice standards. In accordance with California Government Code Section 8546.7, this Agreement and the Contractor's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

6. Business Licenses and Other.

6.1 Business License. Contractor acquires at its sole expense a business license from the City in accordance with that chapter. Such licenses must be kept valid throughout the Agreement Term.

6.2 Other Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice in their respective professions. Contractor expressly represents and warrants to City that Contractor and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

7. Inspection.

The City may inspect the Shelter on a periodic basis. Contractor and City shall jointly prepare a checklist following each of these inspection tours and any deficiencies noted on the checklist will be corrected, in a timely fashion.

8. Independent Contractor.

Contractor and City agree that the Contractor will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Contractor in the performance of the Services (except for the Animal Control Officers who are

employed by the City) will not be employees or agents of the City. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

9. Standard of Performance.

Contractor will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession and will prepare all work products required by this Agreement in accordance with those standards. Contractor will comply with all federal, state and local laws and regulations applicable to performance of the Services. Contractor's failure to comply with any law(s) regulations(s) applicable to the performance of the Services shall constitute a default subject to termination of this Agreement in accordance with Section 18 of this Agreement.

10. Contractor's Website.

In coordination with the City, contractor shall provide current content for its website to provide timely public access to information concerning the Shelter, fees charged by Contractor, adoption and related services, and the City's animal licensing fees. The website shall also contain a lost and found register, information on unclaimed animals and animals available for adoption, transfer or placement, opportunities for volunteering at the Shelter and fostering of animals.

11. Treatment of Documents.

All plans, specifications, reports, designs and other documents prepared by Contractor pursuant to this Agreement shall be and remain the property of the City. Except as may be otherwise required by law, Contractor will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of the City. As part of the performance of the Services, Contractor shall fully cooperate with the City concerning fulfillment of any legal obligations of the City concerning information prepared or maintained by the Contractor pursuant to this Agreement, including, but not limited to, obligations of the City pursuant to the California Public Records Act and other applicable law. Any Public Records Act requests received by Contractor shall immediately be delivered by Contractor to the City so that the City may prepare and deliver an appropriate and timely response.

12. Animal Control Officers.

The City shall devote one full-time (34 hours per week) and one part-time (20-30 hours per week) Animal Control Officers to the shelter.

13. Conflict of Interest Prohibition.

13.1 Compliance with City Conflict of Interest Code. City and Contractor will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to the provisions of California Government Code Section 87300 and following, the Political Reform

Act (California Government Code Section 81000 and following), the regulations promulgated by the Fair Political Practices Commission (Title 2, Section 18110 and following of the California Code of Regulations), California Government Code Section 1090 and following, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Members of Contractor's governing body and its Executive Director may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services, pursuant to the City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

13.2 Government Code Section 1090. Contractor may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to the Contractor's obligations pursuant to this Agreement. Neither shall Contractor employ any City official, officer or employee in the performance of the Services in violation of any applicable rule or law, nor may any official, officer or employee of the City have any financial interest in this Agreement that would violate California Government Code Section 1090 and following. Contractor warrants that it did not participate in any manner in the forming of this Agreement in violation of Government Code Section 1090. Contractor understands that, if this Agreement is made in violation of Government Code Section 1090 and following, the entire Agreement is void and Contractor will not be entitled to any compensation for Contractor's performance of the Services, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Consultant under this Agreement. Contractor understands that penalties for violating Government Code Section 1090 may include criminal prosecution and disqualification from holding public office in the State of California. The Contractor agrees to cooperate fully with the City and to provide any necessary and appropriate information requested by the City or any authorized representative concerning potential conflicts of interest or prohibitions concerning the Contractor's obligations pursuant to this Agreement.

13.3 Violation a Default. Any violation by the Contractor of the requirements of this section 13 or section 14 below, will constitute a default subject to termination pursuant to Section 18 of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

14. Brown Act.

Contractor's Board of Directors ("**Board**") shall, in the holding of regular and special meetings or other formal deliberations, shall comply with the Ralph M. Brown Act, California Government Code sections 54950 *et seq.*, as supplemented by the City's Sunshine Ordinance as codified in the Alameda Municipal Code, Chapter II, Article VIII. Said meetings shall be held in public locations that are ADA accessible and, if requested by Contractor, a location provided by the City. Agendas for all regular meetings shall be posted at least 7 days in advance, including but not limited to, on Contractor's website or, upon request and timely submission, on the City's website. Minutes from said meetings shall likewise be posted on Contractor's website or, upon timely submission by Contractor, the City's website.

15. Other Government Regulations.

Contractor shall ensure that the Services are performed in accordance with all rules and regulations applicable to performance of the Services, including, but not limited to, rules and regulations of the City and rules and regulations that apply as a result of funding of other public or private entities for the Services of the Shelter.

16. Indemnity.

To the maximum extent permitted by law, Contractor shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("**Indemnitees**") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "**Liability**") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Contractor's failure to comply with any of the terms of this Agreement, except as caused by the gross negligence or willful neglect of an Indemnatee. The Contractor's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Contractor's inability to evaluate Liability, or because the Contractor evaluates Liability and determines that the Contractor is not or may not be liable. The Contractor must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Contractor fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Contractor under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first. The Contractor waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Contractor arising out of or in connection with the Services or Contractor's failure to comply with any of the terms of this Agreement.

17. Intentionally Omitted.

18. Default.

18.1 Events of Default. It shall constitute a default under this Agreement if any of the events described below occurs after not less than ten (10) business written notice and opportunity to cure. If the defaulting party, upon receipt of such notice and opportunity to cure, promptly commences and completes such cure within the time specified or any extension granted by the non-defaulting party at the reasonable discretion of and to the reasonable satisfaction of the non-defaulting party, then such default will be deemed cured.

- (a) Either party liquidates its business, becomes insolvent, makes an assignment for the benefit of creditors or has filed against it a petition of bankruptcy, bill in

equity, or other proceeding(s) 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 Contractor or if any levy or sale or execution of any kind is made upon or of the any property of the Contractors in the Premises.

(b) Either party fails to perform any of its obligations in accordance with this Agreement

(c) Either party breaches the terms of the Lease.

18.2 Remedies for Contractor Breach. If Contractor materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City, at its sole and absolute discretion, may :

18.2.1 Withhold the amount of any monthly reimbursement payments tied to the specific area of the breach, which would otherwise be payable under section 4 above, until such Event of Default has been cured;

18.2.2 Terminate the Agreement by written notice to the Contractor specifying the termination effective date, which shall in no event be less than thirty (30) days after said notice;

18.2.3 Retain, and/or recover from the Contractor at no additional cost to the City, the plans, specification, drawings, reports and other documents and work products prepared by Contractor, whether or not completed, and any and all materials or property provided to or prepared by Contractor, and any and all materials or property provided to or prepared by City for Contractor, in connection with this Agreement;

18.2.4 Complete the unfinished Services itself or have the unfinished Services completed, and/or;

18.2.5 Charge Contractor, or deduct from monies that may be due or become due the Contractor under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Contractor had Contractor completed the Services in accordance with this Agreement

18.3 Remedies for City Breach. If the City is in breach of any provision of this Agreement or the Lease, Contractor shall have all rights and remedies afforded to it by this Agreement or law or equity, including but not limited to, terminating this Agreement by written notice to City specifying the termination effective date, which shall in no event be less than thirty (30) days after said notice.

19. 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:

19.1 If for Contractor, addressed to Contractor at:

Friends of the Alameda Animal Shelter
1590 Fortmannnn Way
Alameda, CA 94501
Attention: Executive Director
Telephone: (510) 337-8560

19.2 If for the City, addressed to the City 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)

19.3 Change of Address. Notwithstanding the addresses provided in subsections 17.1 and 17.2 of this section, any party may from time to time designate an alternate and/or additional address by notice given pursuant to this Section 17.

20. Miscellaneous.

20.1 Governing Law. This Services Agreement shall be interpreted and enforced in accordance with the Laws of the State of California and the City and Contractor hereby irrevocably consent to the jurisdiction and proper venue of such state.

20.2 Severability. If any section, term or provision of this Services Agreement is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Services Agreement shall not be affected thereby, but shall remain in full force and effect.

20.3 Attorneys' Fees. In the event of an action, suit, arbitration or proceeding brought by the City or Contractor to enforce any of the other's covenants and agreements in this

Services Agreement, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

20.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by the City or Contractor, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances, extreme weather and other causes beyond the reasonable control of the performing party ("**Force Majeure**").

20.5 Employment. During the Term of this Service Agreement, and with respect only to employment or employees, Contractor agrees as follows:

(a) During the performance of this contract, Contractor and its any subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor and any subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractor and any subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900, et seq.). The applicable regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000, et seq.). The applicable regulations of the Fair Employment and Housing Council implementing Government Code section 12900, set forth in Subchapter 5 of Division 4.1 of Title 2 of the California code of Regulations are incorporated into this contract by reference and made a part hereof, as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor agrees to post in conspicuous places, notices to be provided by the applicable government agencies, setting forth the provisions of this nondiscrimination provision.

(b) Contractor shall provide a copy of its employee hiring policies and other employee rules and regulations for review by the City's HR Director to assure that the rules and policies provide for consistency, fairness and compliance with laws relating to anti-discrimination and anti-nepotism and this Services Agreement.

20.6 Authority. If Contractor is a corporation, partnership, trust, association or other entity, Contractor and each person executing this Services Agreement on behalf of Contractor does hereby covenant and warrant that (a) Contractor is duly incorporated or otherwise established or formed and validly existing under the laws of its state of

incorporation, establishment or formation, (b) Contractor has and is duly qualified to do business in California, (c) Contractor has full corporate, partnership, trust, association or other power and authority to enter into this Services Agreement and to perform all Contractor's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Services Agreement on behalf of Contractor is duly and validly authorized to do so. Upon execution hereof and at the City's request, Contractor shall provide the City with a written certification of its Corporate Secretary or other appropriate authorizing officer or partner attesting that at a duly noticed meeting of its Board of Directors or other governing body a resolution has been unanimously adopted approving Contractor's execution hereof, thereby binding itself to the terms of this Services Agreement and identifying the person(s) authorized to execute this Lease on behalf of Contractor.

20.7 No Third Party Beneficiaries. The parties do not intend to create, and nothing in this Services Agreement shall be construed to create any benefit or right in any third party.

20.8 Entire Agreement. This Services Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Services Agreement, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Services Agreement may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

20.9 Authority of City Manager. The City Manager shall have the authority to act on behalf of the City with regard to any actions required by the City under this Services Agreement except for any amendment which materially change the rights and obligations of the parties hereunder, which amendments require approval of the City Council.

20.10 Counterparts. This Services Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and Contractor have respectively signed this Services Agreement as of the day and year first above written.

City:

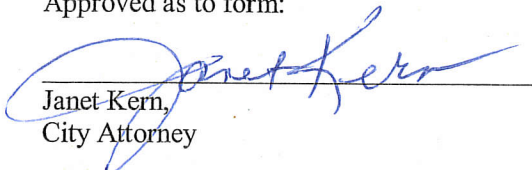
Contractor:

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

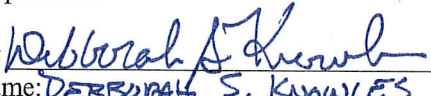
By 

Jill Keimach
City Manager

Approved as to form:


Janet Kern,
City Attorney

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

By 

Name: DEBORAH S. KNOWLES
Title: PRESIDENT, BOARD OF DIRECTORS

EXHIBIT A

FAAS Budget Proposal – FY 2017/18; Expenses

	FY 16/17 Forecast	FY 17/18 Estimate	FAAS	CITY
EXPENSES				
Payroll – 6100	\$ 586,500	\$ 711,800	\$ 133,500	\$ 578,300
Shelter Expense – 6200	\$ 203,700	\$ 214,800	\$ 62,800	\$ 152,000
Occupancy – 6300	\$ 36,200	\$ 39,100	\$ 0	\$ 39,100
Insurance – 6400	\$ 14,600	\$ 15,400	\$ 6,300	\$ 9,100
Pro Services – 6500	\$ 131,800	\$ 56,500	\$ 32,700	\$ 23,800
Operating/Admin	\$ 73,500	\$ 80,000	\$ 78,000	\$ 2,000
Fundraising – 6700	\$ 63,500	\$ 74,000	\$ 74,000	\$ 0
Community Engagement – 6800	\$ 0	\$ 100	\$ 100	\$ 0
In-Kind – 62500	\$ 70,000	\$ 147,000	\$ 147,000	\$ 0
TOTAL:	\$1,179,800	\$1,338,700	\$ 534,400	\$ 804,300

EXHIBIT B

Employment and Compensation Schedule

Full-Time Staff	Compensation Paid By:	
	CITY	FAAS
(1) Executive Director	X	
(1) Shelter Operations/Facilities Manager	X	
(1) Animal Care Supervisor	X	
(2) Customer Care Associates	X	
(1) Vet Tech – Certified	X	
(1) Community Outreach/Volunteer	X	
(1) Animal Behavior Coordinator		X
(1) Marketing, Communications & Development Coordinator		X
Part-Time Staff	Compensation Paid By:	
	CITY	FAAS
(1) Senior Animal Care Attendants (34 hours per week)	X	
(4) Animal Care Attendants (20-30 hours per week)	X	

