

## **ANIMAL SHELTER OPERATOR AGREEMENT**

This **ANIMAL SHELTER OPERATOR AGREEMENT** (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (“**Effective Date**”), by and between the CITY OF ALAMEDA, a municipal corporation (the “**City**”), and FRIENDS OF THE ALAMEDA ANIMAL SHELTER, a California non-profit public benefit corporation, whose address is 1590 Fortmann Way, Alameda, CA 94501 (the “**Operator**”), in reference to the following facts and circumstances:

### **RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. 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 Operator to manage and implement said services as set forth below.
- C. Operator possesses the skill, experience, ability, background, certification and knowledge to provide the Services described in this Agreement on the terms and conditions described herein.
- D. City and Operator desire to enter into an agreement for Operator to provide the Services, upon the terms and conditions herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Operator agree as follows:

#### **1. TERM.**

- 1.1. Initial Term. The term of this Agreement shall commence on the \_\_\_\_ day of July 2021, and shall terminate on the \_\_\_\_ day of \_\_\_\_\_, 2023, unless terminated earlier as set forth herein.
- 1.2. Extension Term. The City may, in its sole and absolute discretion, offer Operator up to four two year extensions of the Term of this Agreement (the “**Extension Term**”) – for a total of up to 10 years -- upon the same terms and conditions set forth herein. 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**”). Operator 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 Operator fails to

unconditionally accept the Extension Offer, the Term of this Services Agreement shall expire on the Termination Date specified above.

**2. PREMISES.**

As used in this Agreement, the “Shelter” refers to the building, land and parking areas located at 1590 Fortmann Way, commonly known as the Alameda Animal Shelter. Operator shall operate and use the Shelter to provide the Services as necessary.

**3. SERVICES TO BE PERFORMED:**

Operator shall provide the following Services:

3.1. Shelter Services: General. The Services to be provided by Operator at the Shelter will include, but not be limited to, sheltering and providing necessary medical care for all covered animals, 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 Agreement, the terms “**animal**” or “**animals**” shall mean domestic animals typically maintained by Alameda residents as pets, including, without limitation dogs, cats, certain rodents and birds, and certain non-poisonous reptiles, but excluding equine animals, animals used in agricultural production, insects, arachnids, crustaceans, and fish.

3.1.1 Standards. Operator shall maintain and adhere to evolving best practice protocols regarding Shelter admission and intake procedures, care and welfare of animals, employee conduct and operations. Operator 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. Operator’s employees shall have training and/or experience appropriate to their positions.

3.1.2 Hours. Operator agrees that the Shelter shall provide services to the public between the hours of 11:00 a.m. and 5:00 p.m., Monday through Sunday. At Operator’s discretion, the Shelter services may be closed to the public on holidays. Operator may expand or modify the above hours, as its management deems appropriate, so long as the Shelter provides public services on the weekends and for a minimum of forty-two (42) hours per week.

3.2. Animal Intake

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

3.2.2 Animals from Residents. Operator shall accept all owner-surrendered animals from residents of the City of Alameda, California (the “**Service Area**”). Operator may, but shall not be required to, accept for treatment or euthanasia other owner-surrendered animals not covered by this Agreement. However, under no circumstances shall equine animals or mammals used in agricultural production be housed overnight at the Shelter.

3.2.3 Admissions. Operator shall not turn any animal away due to its species or breed.

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, Operator shall promptly initiate a search for the owner through the microchip vendor.

3.3.2 Vaccination. All animals shall be vaccinated, including intranasal or oral Bordetella, DA2PP, Leptospirosis, Canine Influenza, and Rabies for dogs, and FVRCP, FeLV and Rabies 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. Operator 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 with applicable state laws regarding holding periods, eligibility for adoption, and transfers.

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 placed into quarantine at the animal’s home or, in the discretion of Operator, in the Shelter. Operator shall document and monitor all animals under quarantine in or out of the Shelter 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.

For animals quarantined in the Shelter, Operator 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 Operator to be used for the operation of the Shelter.

- 3.5. Dead Animals. Operator shall accept custody of dead animals, as well as animals not covered by this Agreement, from Animal Control or from the community, and shall be responsible for disposing of the same. City and Operator shall coordinate to adopt standard operating procedures for the transfer of dead animals from Animal Control to Operator.
- 3.6. Service Area. The Shelter shall be operated to meet the animal services needs of the Service Area which is the City of Alameda.
- 3.7. Animal Control Only After-Hours Drop-Off Kennels. Operator shall maintain after-hours drop-off kennels for the sole use of the City's Police Department and Animal Control Officers, and shall take custody of animals dropped off in such kennels.
- 3.8. Euthanasia and Vivisection. Operator shall not euthanize any animal based on the animal's time in the Shelter or because of inadequate Shelter 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 Operator. Operator shall follow a clear protocol on the use of euthanasia, in compliance with California law. City and Operator shall not permit the release of an animal to any person, group or agency for research or vivisection purposes.
- 3.9. Adoption, Placement or Transfer of Animals. Operator shall make every reasonable effort to determine if an impounded animal has an owner and, if so, 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, Microchipped and Licensed. 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 Operator's adoption fees. Operator shall also require all cats and dogs, whether released to their prior owners or released for adoption, to be licensed in accordance with City of Alameda policies and procedures.
  - 3.9.2 Adoption Outreach. Adoption shall be promoted through a variety of outreach strategies including advertising, internet, mobile and off-site events. Operator shall transfer any animal to another animal welfare agency, foster family or Rescue Group that would allow for the transferred animal to be euthanized.
  - 3.9.3 Spay/Neuter of Certain Impounded Animals. Any unlicensed and unsterilized animal impounded by the Shelter shall be spayed or neutered

before being returned to the animal's owner. Additionally, any unsterilized animal impounded by the Shelter three or more times shall be spayed or neutered before being returned to the animal's owner.

- 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 Operator.

3.10.1 Volunteer Program. Operator 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 Operator. A volunteer policy manual or guidebook for the management of the program shall be created and maintained by Operator.

#### 4. COMPENSATION TO OPERATOR.

- 4.1. Annual Compensation. For the first twelve (12) months of the Term of this Agreement, City shall reimburse Operator in an amount not to exceed Nine Hundred Ninety-Seven Thousand Eight Hundred and Eighteen Dollars (\$997,818.00) for the expenses identified in the FAAS Budget Proposal – FY 2021/22; Expenses (“**Budget**”) attached hereto as **Exhibit A** (the “**Not to Exceed Amount**”). Included in the Not to Exceed Amount is the City's contribution to salary and benefits for Operator's employees in accordance with the Employment and Compensation Schedule attached hereto as **Exhibit B**. 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 City shall be substituted to determine the adjustment. If Operator desires, it may request compensation in excess of the Not to Exceed Amount by submitting its request in writing to City for its review and consultation.
- 4.2. Documentation of Services. City shall pay to Operator for Services that are actually performed in accordance with this 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 City's obligation in the Budget attached as Exhibit A. 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, Operator 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, Operator shall also provide receipts or invoices from such vendors or contractors. Invoices shall be submitted within thirty (30) days after the end of the month covered by the invoices. City shall pay any such properly submitted and documented invoices within thirty (30) days after receipt thereof.

- 4.3. Additional Sources of Revenue. Operator 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 Operator, over and above the Not to Exceed Amount specified above. To assist Operator, City shall reasonably make available, at no cost to Operator, any grant contractor engaged by 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 Operator's Board of Directors.
- 4.4. Early Termination. If, at any time during the Term of this Agreement, 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 Agreement may be terminated by City by the giving of not less than ninety (90) days prior written notice to Operator specifying the termination date. Upon receipt of such notice, Operator shall continue to perform the Services through the date of termination. City shall pay Operator for all Services actually performed in accordance with this Agreement through the termination effective date. If the City Council appropriates less than the full amount of funds for a given month that would otherwise be required hereunder, Operator may, by written notice to City delivered not less than sixty (60) days after such appropriation, agree to continue to perform the Services required hereunder for the amount of compensation so appropriated by the City Council, or request a renegotiation of the terms of this Agreement.

## **5. ANIMAL CONTROL OFFICERS.**

City shall, at a minimum, devote one full-time (34 hours per week) and one part-time (20-30 hours per week) Animal Control Officers to the Shelter.

## **6. STANDARD OF CARE.**

Operator agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by City.

**7. OPERATOR'S WEBSITE.**

Operator shall post current content on its website concerning the Shelter, fees charged by Operator, adoption and related services, and City's animal licensing fees. The website shall also contain a lost and found portal, information on unclaimed animals and animals available for adoption, transfer or placement, and opportunities for volunteering at the Shelter and fostering of animals.

**8. PERMITS AND LICENSES.**

- 8.1. Business License. Operator shall acquire at its sole expense all necessary business licenses from the City. Such licenses must be kept valid throughout the Agreement Term.
- 8.2. Other Licenses and Permits. Operator represents and warrants to City that Operator 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. Operator expressly represents and warrants to City that Operator 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.

**9. INSPECTION.**

City may inspect the Shelter on a periodic basis. Operator 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.

**10. REPORTS.**

- 10.1. FAAS shall present an annual report to the City Council regarding the quantity and quality of services provided under the service agreement. FAAS shall also continue to provide mid-year status reports to the City Manager. An annual financial audit will be conducted and posted on FAAS' website.
- 10.2. Financial Accounting. Operator shall maintain data management and use of appropriate software to allow for effective data management in cooperation with City. The parties agree that QuickBooks Software is appropriate for these purposes. Financial accounting of Operator 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 Operator'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.

## **11. TREATMENT OF DOCUMENTS.**

- 11.1. Operator shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Operator's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").
- 11.2. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Electronically-stored information shall be sufficient to satisfy this requirement. Operator shall provide free access to the Records to the representatives of City or its designees during regular business hours upon reasonable prior notice. City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records shall be kept by Operator for a period of three (3) years after receipt of payment.
- 11.3. Each and every report, draft, work product, record and other document produced, prepared or caused to be prepared by Operator pursuant to or in connection with this Agreement shall be the exclusive property of City. Unless directed by a court, no report, information or other data given to or prepared or assembled by Operator pursuant to this Agreement shall be made available to any individual or organization by Operator without prior approval of the City Manager or his/her designee.
- 11.4. Any Public Records Act requests received by Operator shall immediately be delivered by Operator to City so that City may prepare and deliver an appropriate and timely response.
- 11.5. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records disclosed a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Operator shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

## **12. INDEPENDENT PARTIES.**

Operator hereby declares that Operator is engaged as an independent business and Operator agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Operator, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Operator's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Operator, its employees or



agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Operator. Payments of the above items, if required, are the responsibility of Operator.

**13. IMMIGRATION REFORM AND CONTROL ACT (IRCA).**

Operator assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Operator shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Operator.

**14. NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable employer/employee conduct, neither Operator nor Operator's employees, agents, subcontractors or suppliers shall harass or discriminate any job applicant, City employee, or any person on the basis of any kind of any statutorily (federal, state or local) protected status, including but not limited to race, religious creed, color, national origin, ancestry, disability (mental and physical) including HIV and AIDS, medical condition (e.g. cancer), genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, pregnancy, political affiliation, military and veteran status or legitimate union activities. Operator agrees that any violations of this provision shall constitute a material breach of this Agreement.

**15. HOLD HARMLESS:**

- 15.1. Operator shall indemnify, defend, and hold harmless City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Operator's negligent, reckless or intentional acts or omissions, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence, recklessness or willful misconduct on behalf of Operator, Operator shall have no right of reimbursement against Indemnitees for the costs of defense if negligence, recklessness or willful misconduct is found on the part of Operator. However, Operator shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.
- 15.2. Indemnification for Claims for Professional Liability Only. As to Claims for professional liability only, Operator's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.
- 15.3. Operator's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

**16. INSURANCE:**

16.1. On or before the commencement of the terms of this Agreement, Operator shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 16.3.A, B, C and D below. Such certificates, which do not limit Operator's indemnification, 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 ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

16.2. It is agreed that Operator shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California.

16.3. Operator shall deliver updated insurance certificates to City prior to the expiration of the existing insurance certificates for the duration of the term of this Agreement. Endorsements naming City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

/s/  
Provider Initials

**A. COVERAGE:**

Operator shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other
Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum

limits shown above. Additional Insured Endorsement naming City, its City Council, boards, commissions, officials, employees, and volunteers is required.

**B. SUBROGATION WAIVER:**

Operator 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, Operator shall look solely to its insurance for recovery. Operator hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Operator or City with respect to the services of Operator herein, a waiver of any right to subrogation which any such insurer of said Operator may acquire against City by virtue of the payment of any loss under such insurance.

**C. FAILURE TO SECURE:**

If Operator at any time during the term of this Agreement should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Operator's name or as an agent of Operator and shall be compensated by Operator for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that Operator has failed to secure or maintain the foregoing insurance.

**D. ADDITIONAL INSURED:**

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except workers' compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled 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. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance held by Operator.

**E. SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

**17. CONFLICT OF INTEREST.**

Operator warrants that it is not a conflict of interest for Operator to perform the Services required by this Agreement. Operator may be required to fill out a conflict of interest form if the Services provided under this Agreement require Operator to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations. Any violation by Operator of the requirements of this Section 17 will constitute a default subject to termination pursuant to Section 22 of this Agreement, and City reserves all its rights and remedies at law and equity concerning any such violations.

**18. PROHIBITION AGAINST TRANSFERS:**

18.1. Operator shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Operator shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager or his or her designee may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against City under this Agreement may be assigned by Operator to a bank, trust company or other financial institution without prior written consent.

**19. APPROVAL OF SUB-PROVIDERS:**

19.1. Only those persons and/or businesses whose names and resumés are attached to this Agreement shall be approved to be used by Operator in the performance of this Agreement. However, if after the start of this Agreement, Operator wishes to use additional sub-providers, at no additional costs to City, then Operator shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion. When used in this Agreement, the term “**sub-providers**” shall include any vendor, independent contractor, business or organization that agrees to work with or for Operator in the performance of tasks related to this Agreement.

19.2. Each sub-provider shall be required to furnish proof of workers’ compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by Operator. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

19.3. The requirements in this Section 19 shall not apply to persons who are merely providing materials, supplies, data or information which Operator then analyzes and incorporates into its work product.

**20. NOTICES:**

20.1. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party’s respective address listed in this Section.

20.2. Each notice shall be deemed to have been received on the earlier to occur of: (i) actual delivery or the date on which delivery is refused; or (ii) three (3) days after

notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

20.3. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

20.4. All notices, demands, requests, or approvals from Operator to City shall be addressed to City at:

City of Alameda  
2263 Santa Clara Ave.  
Alameda, CA 94501  
ATTENTION: City Manager

20.5. All notices, demands, requests, or approvals from City to Operator shall be addressed to Operator at:

Friends of the Alameda Animal Shelter  
1590 Fortmann Way  
Alameda, CA 94501

20.6. All updated insurance certificates from Operator to City shall be addressed to City at:

City of Alameda  
2263 Santa Clara Ave.  
Alameda, CA 94501  
ATTENTION: Risk Manager

## **21. SAFETY.**

21.1. Operator will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. Operator's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

21.2. Operator will immediately notify City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement, and shall submit a written report of all such incidents. The written report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of individuals involved in the incident; (iii) name and address of Operator's liability insurance

carrier; (iv) a detailed description of the incident; and (v) a police report, if obtained for the incident.

## **22. DEFAULT.**

22.1. 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 days 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.

22.1.1 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 proceedings for reorganization or composition with creditors under any law are instituted by or against Operator.

22.1.2 Either party fails to perform any of its obligations in accordance with this Agreement.

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

22.2.1 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;

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

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

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

22.2.5 Charge Operator, or deduct from monies that may be due or become due Operator 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 Operator had Operator completed the Services in accordance with this Agreement.

22.3 Remedies for City Breach. If City is in breach of any provision of this Agreement or the Lease, Operator 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.

**23. ATTORNEYS' FEES.**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights. For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney's office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

**24. COMPLIANCE WITH ALL APPLICABLE LAWS.**

During the term of this Agreement, Operator shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by Operator, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Operator shall comply with all applicable laws, state and federal, and all ordinances, rules and regulations enacted or issued by City.

**25. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**26. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**27. INTEGRATED CONTRACT:**

The Recitals and Exhibits are material parts of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Operator.

**28. CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

**26. COUNTERPARTS:**

This Agreement may be executed in any number of counterparts (including by fax, PDF, DocuSign, or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**27. SIGNATORY:**

By signing this Agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

**28. CONTROLLING AGREEMENT:**

In the event of a conflict between the terms and conditions of this Agreement and any other terms and conditions wherever contained, including, without limitation, terms and conditions included within exhibits, the terms and conditions of this Agreement shall control and be primary.



IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed on its behalf as of the Effective Date.

FRIENDS OF THE ALAMEDA ANIMAL  
SHELTER,  
a California non-profit public  
benefit corporation,

DocuSigned by:  
  
39EEB0336264401...

By: John L. Lipp  
Its CEO

CITY OF ALAMEDA,  
a municipal corporation

Eric J. Levitt  
City Manager

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

APPROVED AS TO FORM FOR CITY:  
City Attorney

DocuSigned by:  
  
2753DA3A4204469...

Elizabeth A. Mackenzie  
Chief Assistant City Attorney