

## **AMENDMENT TO AGREEMENT FOR ANIMAL SHELTER, BOARD AND CARE**

THIS AMENDMENT TO AGREEMENT DATED JANUARY 21, 2020, between **THE CITY OF PORT ST. LUCIE**, a Florida Municipality, duly organized under the laws of the State of Florida, in the County of St. Lucie, in the State of Florida, hereinafter called, the "City", and the **HUMANE SOCIETY OF ST. LUCIE COUNTY, INC.**, a not-for-profit corporation, 8890 NW Glades Cut-Off Road, Port St. Lucie, FL 34986, or its successors, executors, administrators and assigns, hereinafter called the "Humane Society".

### **WITNESSETH**

**WHEREAS**, the City, through the operation of the Port St. Lucie Police Department Animal Control Division and in enforcement of state and local law regulating animal control and in protection of the health, safety and welfare of the citizens of the City, takes into custody or impounds animals; and,

**WHEREAS**, the Humane Society hereby certifies that it has been granted and possesses valid, current licenses to do business in the State of Florida and in St. Lucie County, Florida, issued by the respective State Board and Government Agencies responsible for regulating and licensing the services to be provided and performed by the Humane Society pursuant to this Agreement; and,

**WHEREAS**, the Humane Society can provide facilities for the shelter, care, and adoption of such animals and the provision of other services to the City's Animal Control Division and to its citizens; and,

**WHEREAS**, the parties agree to mutually cooperate for the purpose of controlling and managing animals within the City.

**NOW, THEREFORE**, in consideration of the mutual benefits received by each party, the parties mutually agree to the amendments to the following sections of the parties' Agreement for Animal Shelter, Board and Care dated January 21, 2020:

#### **A. Scope of Services**

As quoted from the American Society for the Prevention of Cruelty to Animals (ASPCA), "Animals are entitled to kind and respectful treatment by humans, and this is not to be left to the compassionate impulses of humans but is an entitlement that must be protected under the law". In the performance of its duties under this Agreement, the Humane Society shall recognize the Animal Bill of Rights and The Five Freedoms of Animals attached hereto and incorporated herein as Exhibit "A."

The Humane Society shall provide the following services/care pursuant to this Agreement in accordance with the Performance Standards set forth below:

## **1. Acceptance of Animals**

- a. The Humane Society shall be a provider of shelter, board and care for all animals picked up within the City Animal Control Division's jurisdiction or received from the citizens of the incorporated area of the City and delivered to the Humane Society by either the City's Animal Control Division or by any citizen of the incorporated area of the City until the animal is returned to its owner, adopted or otherwise disposed of at the discretion of the Humane Society and in accordance with state and local law.
- b. Delivery of any animal pursuant to this Agreement shall be made to the Humane Society's shelter located at 8890 Glades Cut-Off Road, Port St. Lucie, FL 34986, unless otherwise agreed to by the parties in writing.
- c. Acceptance of an impounded animal from an Animal Safety Services and Protection Officer upon delivery must be done in a timely manner to ensure officers are available for incoming calls from dispatch.
- d. The Humane Society shall always maintain space for animals brought in by the City of Port St. Lucie Animal Control Division. An animal brought in by Animal Control cannot be turned away.
- e. Animal Control must have access twenty-four (24) hours per day seven (7) days per week, including holidays, to turn in animals.

## **2. Special Care**

- a. The Humane Society must ensure that animals with law enforcement holds, quarantines or pets held in protective custody are kept in an isolated area which is not open to public access or visits.
- b. The Humane Society shall ensure employees and volunteers are notified of and have received proper training in handling animals that have law enforcement holds, are in quarantine, or are in protective custody.

## **3. Care**

- a. The best possible care and treatment shall be given to all animals held in custody in accordance with the USDA Animal Welfare Act and Animal Welfare Regulations (Part 3- Standards; Subpart A).
- b. The Humane Society shall provide appropriate medical care and preventative vaccinations to animals delivered to its shelter by the City's Animal Control Division or by any citizen of the incorporated areas of the City.

- c. The Humane Society shall treat flea and tick invasions of animals delivered to its shelter by the City's Animal Control Division or by any citizen of the incorporated area of the City.
- d. The Humane Society shall provide appropriate food and water to all animals delivered to the Humane Society pursuant to the Agreement.
- e. The Humane Society must not be overpopulated and shall have population management procedures in place to maintain an appropriate Capacity of Care for the facility to allow for daily intake of incoming animals in accordance with the Association of Shelter Veterinarians Population Management Guidelines.
- f. Adhere to proper sanitation and disinfection practices defined by the ASV, ASPCA, and/or The Humane Society of the United States (HSUS).
- g. In addition, on or before October 1, 2020, the Humane Society shall provide the City with a copy of its current standard operating procedures for its shelter. In the event the Humane Society amends or otherwise revises such procedures during the term of this Agreement, the Humane Society shall provide a copy of such amendments or revisions to the City within fifteen (15) days of their effective date.

#### **4. Adoption**

- a. The Humane Society shall continue working towards the goal of achieving "no-kill" status as defined in the 2019 Best Friends Animal Society Operational Review of the Humane Society ("Best Friends Operational Review") as "when 90% of the dogs and cats who enter the shelter's care leave alive."
- b. The Humane Society shall make every reasonable effort to prepare and present animals for adoption by the public.
- c. The Humane Society will spay or neuter all adopted animals prior to transfer to adopter.
- d. The Humane Society must make all reasonable attempts to reunite animals with their owners before adoption, to include accessing current licensing records, using contact information on owner provided tags worn by the animals and scanning all animals to detect implanted microchips.
- e. Port St. Lucie Animal Control Officers reserve the right to deem designated aggressive and/or dangerous animals unsuitable for adoption. These are animals that have been declared aggressive and/or dangerous pursuant to Florida Statute and City of Port St. Lucie Code of Ordinances Sec. 92.02.

- f. Any dog that has been declared “dangerous” shall be labeled as such and the public shall be put on notice prior to the dog’s adoption. Animal Control shall be notified if a dog that has been declared “dangerous” is adopted.

## **5. Disposal of Animals**

- a. The Humane Society shall provide for the humane disposal of sick or injured or those animals that cannot be safely adopted.
- b. The Humane Society shall provide cremation and disposal of cremains delivered to the Humane Society by Animal Control at no additional charge to the City.

## **6. Euthanasia**

- a. The Humane Society shall continue working towards the goal of achieving “no-kill” status as defined in the 2019 “Best Friends Animal Society Operational Review of the Humane Society” as “when 90% of the dogs and cats who enter the shelter’s care leave alive.”
- b. The Humane Society shall arrange and/or provide for the humane euthanasia and disposal of animals recommended for euthanasia by a licensed veterinarian. This shall be accomplished in a manner approved by Section 828.058, Fla. Stat. (2019), and shall not subject such animals to any unnecessary pain.
- c. Proof of adequate training and/or certifications provided to shelter workers required to perform euthanasia in accordance with Florida State Laws relating to animals through the Florida Animal Control Association (FACA) and Association of Shelter Veterinarians (ASV).

## **7. Facility Requirements**

- a. The Humane Society shall have an adequate number of dog and cat cages and isolation facilities to further provide for the quarantine of all animals who have been determined to require such isolation by Animal Control.
- b. The Humane Society shall provide an adequate outdoor exercise area for housed animals. It shall be maintained in a clean and sanitary condition in accordance with the USDA Animal Welfare Act and Animal Welfare Regulations (Part 3- Standards; Subpart A).
- c. The Humane Society shall make the facility available for inspection by Animal Control to assess shelter operations during normal business hours and after-hour operations. These inspections may also be unannounced.

## **8. Staffing Requirements**

- a. The Humane Society shall provide key personnel to perform the duties outlined in this Agreement including, but not limited to:
  - i. An Executive Director
  - ii. A Shelter Manager who will manage the shelter on a day-to-day basis and will act as a liaison to the City. The Shelter Manager must also ensure that the Shelter is adequately staffed on a daily basis.
  - iii. Support personnel who are licensed or qualified to provide animal care. The support personnel must be qualified to provide the services outlined in this Agreement's Scope of Services.
  - iv. A full-time, fully licensed veterinarian.

## **9. Subcontractors**

- a. If the Humane Society anticipates providing any service through a subcontractor, the Humane Society shall provide detailed information to the City about the subcontractor's qualifications.
- b. The Humane Society shall provide the City with a description of all work to be subcontracted to third parties.
- c. The Humane Society shall not subcontract any part of the work under this Agreement without first obtaining written consent of the City.
- d. The Humane Society shall be responsible for all work of any subcontractors. The City reserves the right to approve all subcontractors. The Humane Society shall be responsible to the City for the acts and omissions of all subcontractors or agents of the subcontractor and of persons directly or indirectly employed by the subcontractor. Further, nothing contained within this Agreement or any documents created as a result of any Agreement Contract, Mortgage, Grant, or Promissory Note awarded to the Humane Society shall create any contractual relationship between the subcontractor and the City.

## **10. Licensing**

- a. The Humane Society shall sell City animal registration licenses, pursuant to Port St. Lucie Code of Ordinances Section 92.44, and provide a monthly report with remittance of such fees to City by the 5th day of the following month. The Humane Society shall receive a processing fee, determined by the City, for sale of such licenses.

- b. The Humane Society may retain a processing fee, determined by the City, for each license sold at the shelter facility.
- c. License fees and completed forms will be transmitted to the Port St. Lucie Police Department Animal Control Division by the fifth (5<sup>th</sup>) day of each month after the execution of the Agreement.

**11. Collection of Information**

- a. The Humane Society shall provide the City with a monthly report of:
  - i. All animals delivered to the Humane Society's shelter by the City's Animal Control Division.
  - ii. All animals delivered to the Humane Society's shelter by citizens of the incorporated areas of the City, including the names and addresses of the citizens who drop off animals.
  - iii. The number of animals returned to owners in the incorporated areas of the City, including the names and addresses of the owners to whom the animals are returned.
  - iv. The number of animals originating from the City that are adopted out.
  - v. The monthly report shall be produced by the Humane Society and delivered to the City on or before the fifth day of the month following the month for which the report is prepared.
  - vi. The report may be adjusted by the City's Animal Control Division on or before the fifteenth day of the month following the month for which the report is prepared.
  - vii. In the event of a dispute regarding the figures, the City's adjustment shall govern.

**12. Compliance with State and Local Regulations**

- a. The Humane Society must comply with State law and be properly licensed and permitted for operating an animal shelter. The Humane Society must comply with all City ordinances in operation of the shelter.
- b. The Humane Society must operate as a not-for-profit, tax exempt organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 (or corresponding provision of any later U.S. Internal Revenue law).

### **13. Emergency Sheltering**

- a. The Humane Society shall be available to assist with the intake of pets and staff the shelter during declared emergencies.

### **14. Veterinary Care Services**

- a. The Humane Society shall have a veterinarian available to spay/neuter any dog or cat, regardless of gender, size and temperament, at the request of the City.
- b. The Humane Society shall also provide a rabies vaccination (1 time per year) along with a rabies certificate. Any costs incurred will be the responsibility of the citizen.
- c. The Humane Society shall purchase 24hour PetWatch microchips as needed for City at a cost of \$5-\$6 per microchip (variable cost based upon produced cost). The microchips shall be implanted into animal at the request of the City. Any costs incurred will be the responsibility of the citizen.
- d. The Humane Society shall accommodate simple procedures, including but not limited to laceration repairs, tumor removals, and wound care to the animals. The decisions regarding any additional treatments and the costs incurred by those treatments will be the sole responsibility of the citizen.

### **B. Term**

1. The terms of this agreement shall begin October 1, 2020 and shall continue for a four-year term, through and including September 30, 2024, unless otherwise terminated by the City according to the provisions of this agreement.

### **C. Payment**

1. For and in consideration of the services performed by the Humane Society in accordance with this Agreement, the City shall compensate the Humane Society at a set rate of five hundred thousand five hundred U.S. dollars (\$500,500.00) per annum for the shelter, board and care of animals delivered by the Port St. Lucie Police Department Animal Control Division pursuant to this Agreement.
2. For and in consideration for services performed by the Humane Society in accordance with this agreement, the City shall compensate the Humane Society on a quarterly basis beginning on October 1, 2020.
3. All funds provided by the City shall be first allocated to the Humane Society's fixed costs including payment for the mortgage, utilities, insurance, permit, licensing, property taxes and veterinary services before being available for payment of other

operating expenses. Neither the Loan nor Operating Assistance shall be used for payment of any current or future liabilities incurred by the Humane Society due to pending or threatened litigation, and payment of said Loan and/or Operating Assistance by the City shall in no way be interpreted as the City accepting responsibility for any liabilities of the Humane Society, whether due to pending or threatened litigation, or otherwise. Furthermore, payment of said Loan and/or Operating Assistance shall not be construed as the City agreeing to waiver of its sovereign immunity under section 768.28, Florida Statutes.

4. The Humane Society shall provide the City with a quarterly record of all expenditures of City funds provided under this Agreement which details the amount of City funds used and its allocation. The quarterly reports shall be produced by the Humane Society and delivered to the City on or before the fifth day of the month following the quarter for which the report is prepared.

#### **D. Price Adjustment**

1. If during the term of this agreement there becomes an unexpected increase in operating expense of such magnitude as to cause a material and adverse financial burden upon the Humane Society, the Humane Society shall provide proof of such increase to the Procurement Management Department and, upon mutual agreement by both parties the price of the Agreement may be adjusted accordingly.
2. If during the term of this agreement the Humane Society receives funding from a third-party of such a magnitude that there is a material financial benefit to the Humane Society, the City shall have the right to seek adjustment of the price that the City is paying to the Humane Society. If a price, upon mutual agreement by both parties, cannot be reached within thirty (30) days from the date first proposed by the City, the City shall have the right to exercise its option to terminate this agreement as provided under this Agreement.
3. The Humane Society agrees that prior to execution of any agreement with another governmental entity for the provision of animal care and sheltering services, the Humane Society shall notify the City and the City shall have the right to review the proposed terms of said agreement. In the event that the Humane Society offers a lower rate to another governmental entity for the provision of services which are similar to those provided under this Agreement, the Humane Society agrees that the City shall be given an opportunity to decrease the costs for such service or services to the price negotiated in good faith with such governmental entity.
4. At each annual renewal of this Agreement, City shall increase the total annual rate of compensation to the Human Society by thirteen thousand five hundred dollars (\$13,500.00) beginning on October 1, 2021.



## **E. Termination**

1. This Agreement may be terminated by the City with or without cause upon thirty (30) calendar days prior written notice to the Humane Society. Termination is effective on the date specified on the written notice.
2. Should the City terminate the Agreement with the Humane Society prior to receiving services for a full quarter, the Humane Society shall immediately pay the City the remaining pro rata balance of the quarterly payment, unless an alternative payment plan is agreed to by the City.

## **F. Audit**

1. The Humane Society gives the City the right, until the expiration of three years after the expenditure of funds under this Agreement, to audit the use of the monies paid hereunder. Upon ten (10) days written notice, the City at its sole expense shall have access to and the right to examine relevant books, documents, papers and records of the Humane Society involving transactions related to the monies paid hereunder. The Consultant shall give all notices required by and shall otherwise comply with all applicable laws, ordinances, and codes and shall, at his own expense, secure and pay the fees and charges for all permits required for the performance of the Contract.

## **G. Public Records**

1. The City is a public agency subject to Chapter 119, Florida Statutes. The Humane Society shall comply with Florida's Public Records Law. Pursuant to Section 119.0701, F.S., the Humane Society agrees to comply with all public records laws, specifically to:
  - a. Keep and maintain public records required by the City in order to perform the service.
  - b. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.dos.state.fl.us/library-archives/records-management/general-records-schedules/>).
  - c. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. The Humane Society's records under this Agreement include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.

- d. The Humane Society agrees to make available to the City, during normal business hours all books of account, reports and records relating to this Agreement.
- e. A Contractor who fails to provide the public records to the City within a reasonable time may also be subject to penalties under Section 119.10, Florida Statutes.
- f. Upon request from the City's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- g. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Humane Society does not transfer the records to the City.
- h. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Humane Society, or keep and maintain public records required by the City to perform the service. If the Humane Society transfers all public records to the City upon completion of the Agreement, the Humane Society shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Humane Society keeps and maintains public records upon completion of the Agreement, the Humane Society shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

**IF THE HUMANE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE HUMANE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
121 SW Port St. Lucie Blvd.  
Port St. Lucie, FL 34984  
(772) 871 5157  
pr@cityofpsl.com**

**H. Indemnification**

- 1. The Humane Society agrees to indemnify, defend and hold harmless, the City, its officers, agents, and employees from, and against any and all claims, actions,

liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Humane Society, agents, laborers, subcontractors or other personnel entity acting under the Humane Society's control in connection with the Humane Society's performance under this Agreement and to that extent the Humane Society shall pay such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the City in defense of such claims and losses including appeals. That the aforesaid hold-harmless contract by the Humane Society shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of the Humane Society or any agent laborers, subcontractors or employee of the Humane Society regardless of whether such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The Humane Society shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by the Humane Society in performance of this Agreement. This indemnification shall survive the termination of this Agreement.

#### **I. Sovereign Immunity**

1. No provision of this Agreement shall be construed to create a partnership or joint venture of any type between the Humane Society and the City, or in any way make the City responsible for any liabilities of the Humane Society, without limitation. Furthermore, nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. Any provision to the contrary shall be considered void and unenforceable by the City.

#### **J. Insurance**

1. The Humane Society shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by the Humane Society are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Humane Society under this Agreement.
2. The parties agree and recognize that it is not the intent of the City that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement, will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City, and the City shall not be obligated to provide any insurance coverage other than for the City or extend its sovereign immunity pursuant

to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this Agreement, any obligation to name the City as an additional insured under any other insurance policy, or otherwise protect the interests of the City as specified in this Agreement.

3. **Property Insurance / Flood Insurance.** The Humane Society shall procure and agree to maintain Commercial Property Insurance covering the building including Building Ordinance & Law coverage, fixtures, equipment, improvements, and betterments. The Humane Society is responsible for insuring their own personal property. Flood insurance is required for building/improvements and betterments if property lies within a Special Flood Hazard Area. Perils insured should be equivalent to ISO special causes of loss form and the valuation of covered property should be replacement cost. Coverage is to be written in an amount of not less than the full replacement cost without deduction for depreciation, special form including perils of fire, windstorm/hail, earth movement, theft, vandalism, and malicious mischief. All forms of Business Income to be included. Legal Liability Coverage Form and Leasehold Interest Coverage Form are to be included. Equipment Breakdown / Boiler & Machinery is to be included. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply as primary. The City of Port St. Lucie shall be listed as Loss Payee.
4. **Workers' Compensation Insurance & Employer's Liability.** The Humane Society shall agree to maintain Workers' Compensation Insurance and Employer's Liability in accordance with Section 440, Florida Statutes. Employer's Liability and must include limits of at least \$100,000 each accident, \$100,000.00 each disease/employee/volunteer, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided. Coverage shall apply on a primary basis.
5. **Commercial General Liability Insurance.** The Humane Society shall agree to maintain Commercial General Liability Insurance issued under an Occurrence form basis, including Contractual Liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each Occurrence	\$1,000,000
Person/Advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General Aggregate	\$2,000,000
Fire Damage	\$100,000 any 1 fire
Medical Expense	\$10,000 any 1 person
6. **Additional Insured.** An Additional Insured endorsement must be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage shall extend to independent

contractors, fellow employees, and volunteers. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

7. **Automobile Liability Insurance.** The Humane Society shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Humane Society does not own any automobiles; the Business Auto Liability requirement shall be amended allowing the Humane Society to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided. Coverage shall apply on a primary basis.
8. **Professional Liability Insurance.** The Humane Society shall agree to maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability of not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, City reserves the right, but not the obligation, to review and request a copy of the Humane Society's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, the Humane Society warrants the retroactive date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, the Humane Society shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. This policy must include coverage for discrimination.
9. **Crime Insurance.** The Humane Society shall procure and agree to maintain Crime Insurance in limits not less than \$1,000,000 per loss for employee theft, theft of monies and securities, forgery or alteration, and funds transfer fraud. The City of Port St. Lucie must be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary basis, per the following:
  - a. Employee Theft – Per Loss Coverage \$1,000,000
  - b. Forgery or Alteration - \$1,000,000
  - c. Money & Securities – Inside \$100,000
  - d. Robbery, Safe Burglary of other Property – Inside \$100,000
  - e. Computer Fraud - \$1,000,000
  - f. Funds Transfer Fraud - \$1,000,000
  - g. Money Orders & Counterfeit Paper Currency - \$1,000,000
10. **Pollution Liability Insurance.** The Humane Society shall procure and agrees to maintain in full force during the term of this Agreement, Pollution Liability Insurance in limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate for any

operations relating to the handling, storage, and transportation of hazardous materials and/or waste. The City must be listed as an additional insured. A waiver of subrogation shall be provided in favor of the City. Coverage shall apply on a primary basis.

11. **Endorsement.** Except as to Workers' Compensation and Employers' Liability, and Professional Liability, said Certificate(s) and policies shall clearly state that coverage required by the Agreement have been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability, and Auto Liability Policies. The name for the Additional Insured endorsement issued by the insurer shall read "City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents." The Policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance.
12. **Waiver of Subrogation.** The Humane Society shall agree by entering into this Agreement to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss Agreement to waive subrogation without an endorsement then the Humane Society shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should the Humane Society enter into such an Agreement on a pre-loss basis.
13. **Deductibles.** All deductible amounts shall be paid for and be the responsibility of the Humane Society for any and all claims under this Agreement.
14. It shall be the responsibility of the Humane Society to ensure that all vendors, independent contractors, and/or subcontractors utilized by the Humane Society to perform or provide services on the City's premises shall comply with the same insurance requirements referenced above, with the exclusion of when required by written contract. The City, by and through its Risk Management Department, reserves the right, but not obligation, to review, modify, reject, or accept any required policies of insurance including limits, coverages or endorsements, herein. All insurance carriers must have an AM Best rating of at least A: VII or better. A failure on the part of the Humane Society to execute the Agreement and/or punctually deliver the required insurance within 14 days of the event, may be cause for annulment of this Agreement.

#### **K. Extension of Contract**

1. In the event the Humane Society offers in writing three (3) months prior to the end of the term of this Contract, to provide the identical services required in this Contract for the identical period of time for a total charge that is acceptable, and the City agrees

that said services are required, then the City, without additional bidding, negotiation, or City Council action may, with the mutual agreement of all parties, extend this Contract for two (2) additional two (2) year periods.

**L. Notices**

1. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed by registered or certified mail (postage prepaid) return receipt requested, addressed as follows:

To the City:  
City Manager  
City of Port St. Lucie  
121 SW Port St Lucie Blvd  
Port St Lucie, FL 34984

With a copy to:  
City Attorney  
City of Port St. Lucie  
121 SW Port St Lucie Blvd  
Port St Lucie, FL 34984

To the Humane Society:  
Humane Society of St. Lucie County, Inc.  
8890 Glades Cut Off Rd  
Port St. Lucie, FL 34986

or to such other address as any party may designate by notice complying with the terms of this section. Each such notice shall be deemed delivered (a) on the date delivered if by personal delivery; (b) on the date upon which the return receipt is signed or delivery is refused, or the notice is designated by the postal authorities as not deliverable if mailed.

**M. Amendment**

1. No amendment, modification or waiver of this Agreement shall be valid or effective unless in writing and signed by both parties and no waiver of any breach or condition of this Agreement shall be deemed to be a waiver of any other conditions or subsequent breach whether of like or different nature.

**N. Assignment**

1. The Humane Society shall not assign this Agreement or any right or interest under this Agreement, without the City's prior written consent. Any attempted assignment or delegation in contravention of this section shall be void and ineffective.
2. Except as otherwise provided, this Agreement shall be binding upon and shall inure to the benefit of the parties.

**O. Applicable Law**

1. The Humane Society agrees to comply with all local, state and federal laws, rules and regulations and this Agreement shall be governed by the laws of the State of Florida and the City.

**P. Venue and Waiver of Jury Trial**

1. This Agreement shall be interpreted unit and section headings are for convenience only. All interpretations shall be governed by the laws of the State of Florida. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit for St. Lucie County, Florida, for claims under state law and the Southern District of Florida for any claims, which are justifiable in federal court.
2. The Parties to this Agreement hereby freely, voluntarily and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

**Q. Attorney's Fees**

1. In the event suit or action is instituted by the City to enforce any of the terms or conditions of the Agreement, the Humane Society shall pay to the City, in such suit or action in both trial court and appellate court, the City's costs and reasonable attorney's fees.

**R. Severability**

1. The provisions of this Agreement are intended to be severable. If any provision of this Agreement is determined to be void or is declared illegal, invalid, or unconstitutional by a Court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

**S. Representation by Counsel**

1. Each of the parties has been represented by or has had an opportunity to consult legal counsel in connection with the negotiation and execution of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or arbitrator or any governmental authority by reason of such party having drafted or being deemed to have drafted such provision.

**T. Policy of Non-Discrimination**

1. The Humane Society shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. The Humane Society shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation,



marital status, physical or mental disability, political affiliation, income, family status or any other factor which cannot be lawfully used as a basis for service delivery.

**U. Entire Agreement**

1. The written terms and provisions of this Agreement shall supersede any and all prior verbal or written statements of any official or other representative of the City. Such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any manner whatsoever, this Agreement or Agreement documents.

**V. Appropriation Approval**

1. The Humane Society acknowledges that the City of Port St Lucie’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the City Council. The Humane Society agrees that, in the event such appropriation is not forthcoming, this Agreement may be terminated by the City and that no charges, penalties or other costs shall be assessed.

**IN WITNESS WHEREOF, the parties have executed this contract at Port St. Lucie Florida, the day and year first above written.**

**CITY OF PORT ST. LUCIE FLORIDA**

By: \_\_\_\_\_  
**Russ D. Blackburn**  
**City Manager**

By: \_\_\_\_\_  
**Authorized Representative of Humane Society of St. Lucie County, Inc.**

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Before me personally appeared: \_\_\_\_\_  
(please print)

Please check one:

Personally known \_\_\_\_\_

Produced Identification/Type of Identification \_\_\_\_\_

known to me to be the person described in and who executed the foregoing instrument and acknowledged to and before me that \_\_\_\_\_ executed said instrument for the purposes therein expressed.

(he/she)

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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Notary Signature

Notary Public State of \_\_\_\_\_ at Large

My Commission Expires \_\_\_\_\_.

(seal)

**EXHIBIT "A"**  
**ANIMAL BILL OF RIGHTS**

The City of Port St. Lucie recognizes guiding principles from the American Society for the Prevention of Cruelty to Animals (ASPCA) and The Humane Society of the United States (HSUS) such as the Animal Bill of Rights and The Five Freedoms of Animals.

**The Right** of animals to be free from exploitation, cruelty, neglect and abuse.

**The Right** of laboratory animals not to be used in cruel or unnecessary experiments.

**The Right** of farm animal to an environment that satisfies their basic physical and psychological needs.

**The Right** of companion animals to a healthy diet, protective shelter, and adequate medical care.

**The Right** of wildlife to a natural habitat, ecologically sufficient to a normal existence and self-sustaining.

**The Right** of animals to have their interests represented in court and safeguarded by the law of the land.

**The Five Freedoms of Animals**

**Freedom from Hunger and Thirst** - by ready access to fresh water and a diet to maintain full health and vigor.

**Freedom from Discomfort** - by providing an appropriate environment including shelter and a comfortable resting area.

**Freedom from Pain, Injury or Disease** - by prevention or rapid diagnosis and treatment.

**Freedom to Express Normal Behavior** - by providing sufficient space, proper facilities and company of the animal's own kind.

**Freedom from Fear and Distress** - by ensuring conditions and treatment which avoid mental suffering.