

AGREEMENT FOR ANIMAL ADOPTION AND POUND SERVICES

This Agreement for ANIMAL ADOPTION AND POUND SERVICES ("Agreement") is made and entered into this 24th day of OCT, by and between Walker County, Alabama (hereinafter the "County") and the Greater Birmingham Humane Society (hereinafter the "Contractor").

WHEREAS, Bid and the specifications therein are collectively referenced hereinafter as the "Bid", and its terms and conditions are incorporated herein by reference; and

WHEREAS, the services to be performed include, but are not limited to, the capture and detention of stray dogs and other animals in designated areas within Walker County, the detention of those animals at a facility that is owned by the Awarding Authority and located at 23470 Highway 78, Jasper, Alabama (hereinafter referred to as "Shelter"), the operation of the Shelter, the provision of veterinarian services requested by public safety officials of the Awarding Authority (collectively, hereinafter the "Services");

WHEREAS, Contractor, which submitted the lowest responsible response to the Bid, agrees to provide, and the Awarding Authority desires that it provide, the Services pursuant to the terms and conditions in the Bid and in this Agreement.

WITNESSETH

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Awarding Authority and Contractor agrees as follows:

1. Contract Documents/Precedence/Entire Agreement: The documents that compromise the Agreement consist of (i) the Bid, (ii) the Agreement for ANIMAL ADOPTION AND POUND SERVICES, and (iii) the response to the Bid submitted by the Contractor on Sept 27, 2023 (the "Proposal Response" which Response is incorporated by reference). All of these documents collectively may be referenced hereinafter as the "Agreement".

In the event of any conflict in the terms of the contract documents, the order of precedence for resolving that conflict is as follows: (i) terms in this Agreement for ANIMAL ADOPTION AND POUND SERVICES, (ii) terms in the Bid, and (iii) terms in the Bid Response.

This Agreement sets forth and constitutes the entire understanding between the parties with respect to its subject matter. Any prior agreements, negotiations, understandings, or other matters, whether oral or written, that are not made a part of the Agreement have no force or effect. This Agreement may be amended, changed or supplemented only by written agreement executed by all parties.

2. Engagement: The Awarding Authority hereby engages the Contractor, and it agrees to perform the Services, pursuant to the terms and provisions of this agreement. Except as provided in Section 4 below, Contract, at its sole expense, shall furnish all vehicles, labor, materials, tools and equipment required to perform all Services.
3. Term/Early Termination: The term of the Agreement shall begin on the first day of the month after both the following occur: (i) Walker County Commission approves the agreement; and (ii)

each party executes below (the "Effective Date"). After the Effective Date, the Agreement thereafter shall continue in effect for thirty-six (36) months (the "Term")

Notwithstanding this Agreement may be terminated before the expiration of its Term on the occurrence of any of the following:

- (a) Termination for Cause: If any party fails to perform a material obligation under the Agreement, the non-defaulting party may provide the defaulting party notice and request that it cure the deficiency (a "Default") within thirty (30) days following that notice. Further, if Contractor fails to timely cure a Default by it, the Awarding Authority shall have the right to withhold further payments for Services until Contractor cures that breach. If the defaulting party does not cure a Default within the cure period, the non-defaulting party may terminate this Agreement after the expiration of the cure period effectively immediately on provision of a termination notice. The exercise of this right of termination shall not relieve the non-defaulting party of any liability to receive actual, direct damages sustained by virtue of the Default; or
- (b) Termination by County Without Cause: Effective one (1) month after the Effective Date, the County may terminate this Agreement for its convenience without any penalty to the County by providing all parties written notice of the County's intent to terminate at least thirty (30) days before the intended termination date (a "County Termination-for-Convenience Notice").
- (c) Termination by Contractor Without Cause: Effective one (1) month after the Effective Date, the Contractor may terminate this Agreement for its convenience without any penalty to the County by providing all parties written notice of the Contractor's intent to terminate at least thirty (30) days before the intended termination date (a "Contractor Termination-for-Convenience Notice").

Upon the expiration or early termination of this Agreement for any reason, the following understandings apply: (i) the obligations of the parties to each other arising from events occurring before the effective time of termination (including, without limitation, the obligation of the Authority to pay for Services and indemnify obligations of Contractor herein) shall survive termination and remain effective; and (ii) Contractor shall surrender possession of the Shelter to the Awarding Authority as provided in Section 4 below.

4. Use of Shelter: During the Term of this Agreement, the Awarding Authority hereby grants Contractor a non-exclusive license to use and operate the Shelter and surrounding grounds solely for the purpose of performing its Services.

Contractor shall not make any permanent or structural improvements or fixtures to the Shelter without the advance, written consent of the Awarding Authority. Any such improvements or fixtures that are installed by Contractor are merged into the real property and become the property of the Awarding Authority.

During the Term, Contractor, at its expense, may install removable fencing, furnishings, equipment and personal property (collectively, "Personal Property") required for its intended use of the Shelter. All such Personal Property placed in the Shelter by the Contractor shall be and remain the property of the Contractor. Awarding Authority has no obligation to insure or protect Personal Property. Contractor retains the sole risk of loss for Personal Property, and waives and released any claim for loss or damage thereto resulting from or caused by any act or omission of the Awarding Authority. If Contractor maintains physical damage insurance with respect to its

Personal Property located at the Shelter, Contractor shall cause that insurance carrier to waive all rights of subrogation against Awarding Authority.

Contractor is not obligated to insure the Shelter or any part of the realty. Except for claims caused by a party's gross negligence or willful misconduct, the parties hereby release each other and waive any claim for loss of or damage to real or Personal Property on the Premises arising out of or incident of fire, lightning, or other perils normally included in a standard "All Risk: physical damage insurance policy, whether such property constitutes the realty or personality or is in, on or about the Shelter, and whether or not such loss or damage is due to the negligence of the parties or their respective affiliates, agents, employees, guests, licensees, invitees, or contractors.

The following additional understanding apply during the Term:

- (a) Contractor agrees to keep the Shelter and associated grounds in reasonably neat and clean condition at all times during this Agreement.
- (b) With or Without advance notice, representatives of the Awarding Authority reserve the right to enter the Shelter at any time in order to inspect its condition or observe the Contractor's operations there.
- (c) Awarding Authority, at its expense, will maintain the roof, walls and structure of the Shelter in sound condition.
- (d) Contractor, at its expense, will keep, repair and maintain the HVAC, plumbing, electrical and other operating systems that serve the Shelter in a reasonably sound operating condition; provided that Contractor is not obligated to totally replace any such operating system fails due to obsolescence or expiration of its useful life; and
- (e) Contractor, at its expense, shall provide all of the services and utilities (including without limitation, security, water, gas, electricity, and telecommunication) that it requires to perform its Services,

5. Invoices and Payment: Invoices are to be submitted within the first five (5) working days of the month for services provided in the previous month. Payments under this contract shall be made within twenty (20) days of receipt of non-disputed, properly itemized invoice with supporting documentation for the contracted services rendered by the vendor during the previous month. Any amount billed other than the standard base monthly fee (hourly charge for emergency service, etc.

The parties agree and understand that invoices will be separately billed, processed and paid based on where the Services were performed.

The total amount to be paid to the Contractor by the County for Services rendered under this Agreement shall not exceed the monthly fee bid by the vendor.

The County reserves the right to withhold payment for any Services that are not performed in conformance with this Agreement.

6. Exclusion of Consequential Damages: Each party waives and releases from another party from any claim demand or action for consequential, special or indirect damages (including without limitation, incidental, punitive, lost profits, lost business or economic opportunity or cost of cover) if another party commits a Default or otherwise fails to perform its obligations under this agreement, or if a nay party exercises its early termination rights in the Agreement.

7. Indemnification:

Claims by Contractor Representatives Arising from Use of Shelter. Contractor agrees to defend, indemnify, hold harmless, and release the County and it agents, employees and officials (hereinafter collectively the "Indemnities") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorney's fees expert fees, court costs and other litigation costs), loses damages and claims (including those for bodily injury, sickness, disease or death, or to injury to , destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)) by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter "Contractor Representative") that arise out of, related to, result from, or are attributable to any conditions on, in or about the Shelter or any other sites or properties of any Awarding Authority that Contractor Representative may enter or encounter in performing its Services. The obligation under this provision includes Claims by third parties that are allegedly caused in whole or part by the negligence of an Indemnities; provided, nothing herein shall obligate Contractor to indemnify the Indemnities for Claims resulting from the gross negligence or willful misconduct of the Indemnities.

Claims by Parties other than Contractor Representatives: Contractor agrees to defend, indemnify, hold harmless, and release the Indemnitee from and against all Claims by any third parties (excluding any Contractor Representative) that arise out of, related to, result from, or are attributable to any negligent act, omission or conduct by Contractor or any Contractor Representative in performing its (or their) responsibilities and Services under this Agreement; provided that Contractor's indemnification obligation under this provision shall not exceed the amount of the limits of the general liability and automobile insurance policies set forth herein. This indemnification obligation under this provision shall not exceed the amount of the limits of the general liability and automobile insurance policies set forth herein. This indemnification obligation under this provision includes Claims by third parties (excluding any Contractor Representative) that are caused in part by the negligence of an Indemnitee; provided nothing herein shall obligate Contractor to indemnify any of the Indemnitee for Claims resulting from the sole negligence or from the willful misconduct of the Indemnities.

8. Contractor's insurance:

(a) For the duration of this Agreement and for limits not less than stated below, the Contractor shall maintain the following insurance:

Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of the Contractor, with policy limits of not less than \$2,000,000combined single limit and aggregate for bodily injury and Property damage, per occurrence. This insurance shall cover liability for damages for personal injury, death, property damage, vandalism, property loss and theft and also shall extend to damage, destruction and injury caused by or resulting from the acts, operations or omissions of the Contractor, and its officers, agent's employees or contractors in performing its services.

Comprehensive Automobile Liability: Insurance covering owned and rented vehicles or operated by the Contractor, with policy limits of not less than \$1, 0000,000 combined single limit and aggregate per occurrence for bodily injury and property damage.

Worker's Compensation and Employer's Liability: Required

All such insurance shall be provided by a policy or policies issued by a company or companies qualified by law to engage in the insurance business in the State of Alabama with a rating of B+ or better according to the most current edition of the Best's Insurance Reports. The Contractor may use umbrella or excess liability insurance to achieve the required coverage, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect indemnification obligation of Contractor herein.

(b) Additional Named Insured: Except for the Workers Compensation coverage, all coverage shall contain endorsements naming the County, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of Contractor or the performance of its Services. The additional named insured endorsement shall not limit the scope of coverage to the claims against the County resulting from vicarious liability, but shall allow coverage for the County for all Contractor operations and apply to the fullest extent provide by the policies. Such additional insured coverage shall be at least as broad as Additional Insured endorsement from ISO, OG 210.11 85 (or any successor form).

(c) Policies Primary: All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by any Awarding Authority.

(d) Waiver of Subrogation: Contractor shall require the carriers of the above-required insurance coverage to waive all rights of subrogation against the County and its officers, employees, agents, contractors and subcontractors. Further, Contractor hereby waives any rights of subrogation against the County. All general or automobile liability coverage provided herein shall not prohibit the Company or its employees, agents or representatives from waiving the right of subrogation prior to loss or claim.

(e) Proof of Coverage: Before the commencement of Services hereunder, the Contractor shall provide the Awarding Authority a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. These certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the Awarding Authority. If Awarding Authority is not notified that any of the coverage required herein is to be cancelled or changed in such a manner as not to comply with the requirements of this Agreement, the Contractor shall, within fifteen (15) days prior to the effective date of such cancellation or change, obtain and provide the Awarding Authority with binder(s) of insurance evidencing the re-establishment of the insurance coverage required herein.

9. Audit/Contractor's Retention: Upon reasonable advance notice from the County, Contractor, at its expense, agrees to produce financial and records maintained by it with respect to the transactions contemplated under this Agreement and otherwise participate in a periodic audit designed by the County to evaluate whether Contractor I properly accounting or completing financial transactions that are contemplated hereunder. To facilitate any such financial audit, Contractor agrees that, for a period of no

less than two (2) years following the termination of this Agreement, it will maintain all accounting, billing or other financial records (including, but not limited to, documents supporting charges to the County that Contractor generates and maintains in connection with its performance of its service hereunder.

10. Non-Discrimination: Contractor and its employees, agents, and any subcontractors shall not discriminate on the basis of race, color, nation origin, or sex in the performance of the Services contemplated hereunder or in its own employment practices. Failure by the Contractor to carry out these requirements is a material breach of its obligations, which may result in its termination or such other remedy as the Awarding Authority deems appropriate.

11. Other Representation and Warranties:

As additional inducement for the Awarding Authority to enter this Agreement, Contractor makes the following additional representations and warranties:

- (a) That it will perform the Services in a good, workmanlike and expeditious manner
- (b) That, if Contractor conducts business through a corporation, limited liability corporation, or other similar organization,
 - (i) It is duly organized and existing entity that is authorized to perform business under the laws of the State of Alabama, and has the power to enter into and to perform and observe its agreements and covenants in the Agreement.
 - (ii) All actions required to be taken to execute the Agreement, and to perform its covenants, obligations and agreements hereunder, have been duly taken. Those actions may include a resolution duly taken
 - (iii) The execution and performance of the Agreement by Contractor do not constitute and will not cause the breach or violation of any contract, lease, franchise, permit or agreement of any nature to which Contractor is a party.
- (c) That it has not employed or retained any firm, entity or persons to solicit or secure its selection to enter into this Agreement, and that it has not paid or agreed to pay any fee, commission, percentage, gift or other consideration to any such firm, entity or person that is contingent upon or resulting from the award or making of the Agreement; and
- (d) That no part of the public funds to be paid by the County pursuant to this Agreement nor any part of the Services or thing of value whatsoever purchased or acquired by Contractor with said funds shall be paid to or used in any way whatsoever for the personal benefit of any official, member or employee of any federal, state, county, municipal government body whatsoever (or family member of any of those governmental representatives.)

12. Miscellaneous Provisions:

(a) Before commencing the Services, Contractor, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to complete the Services, including without limitation, a business license issued by the County (collectively, "Licensing")/ Contractor further agrees to maintain that Licensing throughout the performance of its Services.

(b) Throughout the Term of this Agreement, Contractor agrees to comply with all the laws, regulations and ordinances issued by federal, state, or local authorities that relate to the performance of the Service (collectively, "Laws), including but not limited to , Laws concerning the safety, inspection, maintenance, and operation of its vehicles and other equipment used to perform the Services, and any Laws regarding the employment and payment of its employees and representatives (including payment of unemployment compensation and workers compensation).

(c) Contractor is an independent contractor. As such, the Contractor solely is obligated to pay or withhold FICA taxes, occupational taxes, and all applicable federal, state and local taxes that arises from its operations and the performance of its Services.

Contractor is not authorized to represent or hold itself out to other as an agent of the County. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Contractor and Awarding Authority. Further, the Awarding Authority does not retain control or authority with respect to the personnel the Contractor engages to perform the Services, and does not retain control over the means and methods in which the Contractor (or any of its employees, representative or subcontractors) perform the Services.

(d) The Contractor shall not assign this Agreement or any of its rights, obligations or the benefits hereunder to any other party without prior written approval of the Awarding Authority, which approval may be withheld for any reason. In no event will this Agreement be assigned to an unsuccessful bidder who was rejected because it was not a responsible or responsive bidder.

(e) The Agreement is made only for the benefit of the Awarding Authority and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(f) This agreement may not be executed in counterparts each of which when executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as the original.

(g) Any forbearance or delay on the part of an Awarding Authority in enforcing any of its rights under this Agreement shall not be construed as a waiver of its rights. No terms of this contract shall be waived unless expressly waived in writing. The Contractor must fully and completely comply with all the duties and obligations to be performed by it under this Agreement. Any past forbearance or waiver of any obligations of any other contractors pursuant any similar, previous agreement is not effective or biding and will not excuse performance under this Agreement.

(h) If any provision of this contract is held to be invalid, illegal or unenforceable by a court of the competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(i) This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

WALKER COUNTY COMMISSION

by: Steve Miller
Chairman
notarized this day
10-24-2023
Jayce Jones Casudine

10-24-2023
Date

GREATER BIRMINGHAM HUMANE SOCIETY

by: [Signature]
Its duly authorized officer

Chief Executive Officer
title

11/13/2023
Date

Approved as to form by County Attorney's Office:

[Signature]
Richard E. Fikes

October 23, 2023
Date