

Contract #216-2014

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of the 11th day of Sept., 2014, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A (hereinafter "Government") on behalf of its Department of Public Safety, 200 East Main Street, Lexington, Kentucky and **LEXINGTON-FAYETTE ANIMAL CARE AND CONTROL, LLC**, a Kentucky limited liability company (hereinafter "Organization"), with offices located at 1600 Old Frankfort Pike, Lexington, Kentucky;

WITNESSETH:

WHEREAS, Government and Organization have entered into a Purchase of Service Agreement dated Sept. 11, 2014, whereby Organization provides animal control services for Government; and

WHEREAS, the Purchase of Service Agreement between Government and Organization obligates Government to lease up to twelve (12) vehicles to Organization to be used for purposes of animal control; and

WHEREAS, one (1) of these vehicles is required for use by the Organization's animal cruelty investigator to perform a portion of the animal control services required by the Purchase of Service Agreement; and

WHEREAS, one (1) of these vehicles is required for use by the Organization's animal licensing employee to perform a portion of the animal control services required by the Purchase of Service Agreement;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein expressed and further contained in the Purchase of Service Agreement,

Government and Organization agree as follows:

1. Lease of Equipment:

Government hereby demises, leases and lets to Organization, and Organization rents, leases and hires from Government up to twelve (12) vehicles more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. The use of all vehicles provided to Organization by Government shall continue to be governed by the terms of this Lease Agreement.

2. Lease Term. This Lease shall commence on the date hereof and shall continue until the termination of the Purchase of Service Agreement between Government and Organization.

3. Rental. Government and Organization understand and intend that the obligation of Organization to provide animal control services for Government is and shall be sufficient consideration for the rent of the vehicles.

4. Title to the Equipment. Title to the vehicles, including any and all repairs and replacements thereof, but excluding any additions made thereto by Organization, shall at all times during the Lease Term be in Government.

5. Maintenance of Equipment. Organization agrees that at all times during the Lease Term it shall maintain, preserve and keep the vehicles in good repair, working order, and condition and that Organization shall from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals.

Organization shall obtain regular and routine vehicle maintenance and repair services from Government's Division of Facilities and Fleet Management. At Organization's request, Government will provide such services for Organization, provided, however, that

the cost to Government shall not exceed the sum of Twenty Six Thousand Dollars (\$26,000.00) and any cost in excess of this sum shall be borne by Organization. Government shall submit a statement to Organization for the actual parts, supplies and costs incurred by Government in providing these services to Organization, in excess of the not-to-exceed amount, and Organization will reimburse Government for such costs within thirty (30) days of receipt of the statement. Upon request, Government will provide Organization with an estimate of anticipated costs of repair and will inform Organization of the then current total cost incurred by Government in providing vehicle maintenance and repair services for Organization. Organization shall use its best efforts to fully comply with all applicable Division of Facilities and Fleet Management' policies and procedures.

6. Taxes and Charges. In the event that the use, possession, or acquisition of the vehicles is found to be subject to taxation in any form, Organization will pay during the Lease Term all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the vehicles, and any vehicle or other property acquired in substitution for or as a replacement of the vehicles, as well as all other charges incurred in the operation, maintenance, use, and upkeep of the vehicles.

7. Insurance.

Organization shall, at its own expense, cause casualty and property damage insurance coverage to be carried and maintained with respect to the vehicles in an amount not less than \$500,000.00, which coverage shall be sufficient to protect the Full Insurable Value of the vehicles and to protect Government and Organization from liability in all events. All insurance proceeds from casualty losses shall be payable to Government

and Organization as their interest in vehicles, and additions thereto, may appear.

8. Disclaimer of Warranties. GOVERNMENT MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE VEHICLES, OR ANY WARRANTY WITH RESPECT THERETO. In no event shall Government be liable for any incidental, indirect, special, or consequential damage in connection with, or arising out of, this Lease Agreement.

9 Use of Equipment. Organization will not install, use, operate, or maintain the vehicles improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by the Purchase of Service Agreement between Government and Organization. Organization shall obtain and maintain all permits and licenses, if any, necessary for use and operation of the vehicles. In addition, Organization shall comply in all respects with all laws of the jurisdiction in which it operates any of the vehicles.

10. Assignment of Lease. This Lease and the interest of the Organization in the vehicles may not be assigned or encumbered in whole or part by Organization for any reason without the prior written consent of Government.

11. Indemnification. Organization shall indemnify, protect and hold harmless Government from and against any and all liabilities, obligations, losses, claims, and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, arising out of, or as the result of entering into this Lease Agreement and the use of any of the vehicles.

12. Default. Organization's failure to comply with any of the terms of the

Purchase of Service Agreement or this Lease Agreement shall constitute an event of default. Upon the occurrence of any event of default, Government shall be entitled immediately re-take possession of the vehicles and to take any other action which may appear necessary or desirable to enforce its rights as owner of the vehicles.

13. Prior Agreements. All prior lease agreements between the parties are terminated by mutual agreement.

14. Notice. All notices and other communications given or required to be given under this Agreement shall be in writing and shall be deemed given at the time it is deposited in the United States mail, postage pre-paid, certified or registered mail, return receipt requested, addressed to the party to whom it is to be given as follows:

Organization: Lexington-Fayette Animal Care and Control, LLC
1600 Old Frankfort Pike
Lexington, Kentucky 40504
Attn: President

Government: Lexington-Fayette Urban County Government
Department of Public Safety
200 East Main Street
Lexington, Kentucky 40507
Attn: Commissioner

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein written.

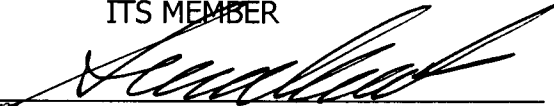
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: 

JIM GRAY, MAYOR

LEXINGTON-FAYETTE ANIMAL CARE
AND CONTROL, LLC

BY: LEXINGTON HUMANE SOCIETY,
ITS MEMBER

BY: 

SUSAN M. MALCOMB, PRESIDENT

BY: 

SUSAN POPE, CHAIRPERSON
BOARD OF DIRECTORS

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Lexington-Fayette ACC Vehicles
EXHIBIT "A"
(As of June 18, 2014)

- ✓(A) ONE 2013 FORD TRANSIT CONNECT: VIN #NMOLS7AN0DT165946
UNIT (9043) RECEIVED 11/7/2013 [REDACTED] PLATE #P9718
- ✓(B) ONE 2007 FORD VAN VIN #2FTZA54267BA28018
UNIT (7393) RECEIVED 9/9/09 [REDACTED] PLATE#N1189
- ✓(C) ONE 2008 FORD F-250 SUPER DUTY H-D TRUCK CAB AND CHASSIS
WITH CANINE ATTACHED BODY VIN #1FDNF20568EA28746
UNIT (9037) RECIEVED 08-7-07 [REDACTED] PLATE#N2525
- ✓(D) ONE 2000 FORD F-350 CREW CAB TRUCK 4X4 VIN
#FTSW31S2YEA48395 UNIT (1853) 8-3-09 [REDACTED] PLATE#J9874
- ✓(E) ONE 2000 CROWN VICTORIA AUTO VIN # 2FAFP71W2YX170785
UNIT (6053) 08-13-09 [REDACTED] PLATE#E8689
- ✓(F) ONE 2009 FORD RANGER TRUCK CAB AND CHASSIS WITH ARF.94
BODY VIN #1FTYR14D19PA31564 UNIT (9038) 05-7-09 [REDACTED]
PLATE # N8285
- ✓(G) ONE 2003 FORD RANGER TRUCK EXTENDED CAB AND CHASSIS
WITH ARF.94 BODY VIN #1FTZR15E73PA99175 UNIT (7159)
RECEIVED 08-01-08 [REDACTED] PLATE# K9749
- ✓(H) ONE 2013 FORD F250 TRUCK CAB AND CHASSIS WITH ARF.95 BODY
VIN # 1FT7X2A68DEB20162 UNIT (9041) 06-1-13 [REDACTED] PLATE#
P9085
- ✓(I) ONE 2002 FORD F-150 PICKUP VIN # 1FTPF17L22NB10122
UNIT (7098) [REDACTED] RECEIVED 1/16/2009 PLATE# K7336

- ✓(J) ONE UNIT #(1858), , 1998 CHEVORLET SUBURBAN VIN#
1GNGK26R7XJ517060 [REDACTED] RECEIVED 11/08/12 PLATE #
J9340
- ✓(K) ONE 2009 FORD RANGER TRUCK CAB AND CHASSIS WITH ARF.94
BODY VIN #1FTYR14DX9PA31563 UNIT (9039) 08-11-09 [REDACTED]
PLATE#N8284
- ✓(L) ONE 2009 FORD RANGER TRUCK CAB AND CHASSIS WITH ARF.94
BODY VIN #1FTYR14D39PA31565 UNIT (9040) 08-11-09 [REDACTED]
PLATE #N8102

ADDENDUM

1. Organization shall operate the Urban County Government's animal care and control program.

2. Pursuant to Lexington-Fayette Urban County Government Code of Ordinances (the "Code") Section 4-22(a), Organization shall provide and maintain an animal shelter as the urban-county animal shelter and designated licensing facility for Government's use. The animal shelter and designated licensing facility shall comply with all applicable federal, state and local laws.

3. In compliance with all applicable federal, state and local laws, Organization shall employ and maintain a staff of animal control officers for the pick-up and handling of animals within Fayette County in accordance with Code Sections 4-2 through 4-10.1, 4-11.1 (to the extent facilities and qualified staff are available for enforcement of Section 4-11.1), 4-12.2, 4-12.3, 4-12.4, 4-12.5, 4-14, 4-16 through 4-22 (excluding the provisions in Section 4-21.1 and 4-21.2 related to the implementation of the Spay and Neuter Grant Program, but including the enforcement provisions thereof), and Article III of Chapter 4 as it relates to the mistreatment of horses. The staff shall include a minimum of ten (10) individuals with animal control authority at all times. Exceptions to the minimum staff requirement are authorized for reasonable periods to accommodate normal employee turnover.

4. Due to the nature of the duties involved and possibility of conflict between Organization's employees and the general public, Organization shall make every reasonable effort to train and counsel its employees so that they are able to conduct themselves in a courteous and professional manner while carrying out their duties.

5. Organization shall employ sufficient personnel to respond to requests for services during regular business hours and after-hours in response to emergency calls. Emergency calls are defined as calls involving injured animals when the location and type of animal involved is provided, police or fire assistance with animals or animal bite cases when police or fire personnel remain on the scene with the animal until the Organization responds, and livestock running at-large. Organization shall not be required to respond to citizen requests after 11:00 p.m. on Monday through Saturday and after 8:00 p.m. on Sunday.

6. Organization shall provide for response to emergency calls from the Government's Division of Police and Division of Fire and Emergency Services on a 24-hour daily basis, including weekends and holidays.

7. Organization shall maintain an office at least six hours per day, six days per week, exclusive of legally declared urban county government holidays, for the purpose of returning to owners animals picked up or received by Organization, collecting fees, and issuing licenses.

8. Under normal circumstances and when determined by Organization to be necessary and feasible, Organization shall provide for patrols to seek out and capture animals running at-large within the county. Organization shall establish the routes of said patrols in an effort to provide more frequent coverage of those areas that prove to be problem areas.

9. Organization shall make a reasonable effort to notify the owner of any properly tagged animal that it picks up or receives prior to the sale, adoption, or destruction of the animal.

10. Organization shall, in addition to other duties enumerated herein, assist the public in capturing loose dogs, injured animals and animals that pose a threat to public safety; capture and impound quarantined animals which have bitten someone; and inspect animal-related facilities as required by the Code. Organization's duty to assist the public in capturing loose animals extends only to assistance serving a public purpose, not a private purpose. For example, Organization is required to assist the public in capturing loose cattle or other livestock on a public road or other public location, not on private property. Accordingly, Organization is not required to assist the public in capturing wildlife (as defined by KRS 150.010(41), including animals such as chickens, ducks, geese, squirrels, skunks, raccoons or opossums) that is a private nuisance or inconvenience and does not pose a risk to public health or safety.

11. Organization shall collect and remit to the Urban County Government twenty-five dollars (\$25.00) of the pick-up fee for livestock and fowl set forth in Section 4-21(c) of the Code and shall maintain records indicating the number of and type of animal picked up, the disposition of said animals, and the amount received therefore.

12. Organization shall collect the redemption fee set forth in Section 4-21(d) of the Code for impounded dogs and cats, twenty-five dollars (\$25.00) of which shall be remitted to the Urban County Government and the balance of which shall be used for the Spay and Neuter Grant Program.

13. Organization shall act as Government's agent for the issuance of animal licenses and may retain six dollars (\$6.00) of the fee for each altered dog or cat license and ten dollars (\$10.00) for each unaltered dog or cat license that it (or its agent) issues pursuant to Section 4-12.3(e) of the Code.