

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants and conditions stated herein and at the time and in the manner stated herein, the parties agree as follows:

1. Recitals. The above recitals are incorporated herein by this reference. Capitalized terms used but not defined herein shall have the meanings set forth in the Lease-Back.

2. Property.

A. City hereby leases to SPCALA and SPCALA hereby accepts "as is" and leases from City the property shown on Exhibit "A," attached hereto and incorporated herein by this reference, commonly known as 7700 East Spring Street, Long Beach, Los Angeles County, California 90805 (the "Property"), and consisting of approximately 6.5 acres. SPCALA acknowledges that it has not received and City has not made any warranty, express or implied, as to the condition of the Property. The SPCALA shall be responsible for the construction of a shelter as is more fully described in this Lease and in the Lease-Back (the "Facility").

B. SPCALA shall use master locks in construction of, and shall provide to City master keys for all exterior doors, gates and other locked enclosures which are part of or lead to the Common Areas.

3. Term.

The term of this Lease shall begin at 12:01 a.m. on August 1, 1998, and shall end at midnight on July 31, 2053, unless sooner terminated as provided herein. September

1st shall be the anniversary date of this Lease. If the California Government Code is amended, after the execution of this Lease, to allow a term greater than fifty-five (55) years, the SPCALA shall have the option to extend to the maximum time allowed by such amendment by giving notice to City of SPCALA's desire to extend.

4. Rent.

A. SPCALA shall pay to City, as annual rent, the sum of One Hundred Twenty Dollars (\$120.00), payable in advance, without deduction, set-off, notice, or demand, on the anniversary date of each Lease year, and other good and valuable consideration, including SPCALA's execution of the Lease-Back, educational programs offered to the community, and other community service inherent in SPCALA's business.

B. Additional Rent. SPCALA shall pay as additional rent any sum expended by City under Section 9(B), and Section 25.

C. Place of Payment. SPCALA shall pay rent at City's address for notice in Section 28.

5. Use.

A. The Property shall be used solely for one or more of the following purposes and no other:

- (i) constructing the Facility;
- (ii) providing for the adoption, care, treatment and disposition of animals; education relating to the care of such animals; administrative offices and facilities; the operation of day and

overnight kennels; and all such other activities and projects consistent with the operation of a society for the prevention of cruelty to animals.

- (iii) leasing back a portion of the Facility to the City for use solely by its Department of Health and Human Services in connection with its animal control program.

B. SPCALA shall not use the Property or conduct its business thereon, in any manner that will create a nuisance or constitute waste. SPCALA shall not make or permit any noise or odors that constitute a nuisance within the meaning of California Civil Code Section 3479 or California Penal Code Section 370.

C. SPCALA shall use the Property and operate its business thereon in compliance with all laws, ordinances, rules, orders of, regulations and requirements of any fire insurance underwriters or ratings bureaus and obtain such permits, licenses, and certificates required by all federal, state, and local governmental authorities having jurisdiction over the Property and SPCALA's business thereon, whether now in effect or which may hereafter come into effect.

D. SPCALA understands and agrees that this Lease covers only the surface of the Property and only so much of the sub-surface as is reasonably necessary or convenient for SPCALA's use of the Property as permitted herein.

E. City is not currently under notice that the Property, in the state existing on the date that the Lease term commences but without regard to improvements made by SPCALA or SPCALA's use, violates any covenants or restrictions of record.

6. SPCALA's Improvements.

A. As additional consideration in lieu of rent payments for this Lease, SPCALA shall construct improvements to the Property as more particularly described in Exhibit "B," attached hereto and incorporated herein by this reference (the "Work"). SPCALA shall do the Work in accordance with plans approved by City's Department of Planning and Building acting in its municipal capacity and not in its capacity as a lessor of property and approved by City's Department of Health and Human Services (the "Department"), which approval from the Department shall not be unreasonably withheld or delayed.

B. SPCALA shall use its best efforts to begin the Work within ninety (90) days after receipt of all necessary permits, licenses, and approvals and shall proceed diligently to complete the Work.

C. All change orders desired by SPCALA above \$50,000.00 shall be approved by the Director of the Department or designee which approval shall not be unreasonably withheld or delayed.

D. Prior to beginning the Work, SPCALA shall file with City a Performance Bond in the amount of one hundred percent (100%) of the estimated cost of the Work and a Labor and Material Bond (also known as a Payment Bond) in the amount of one

hundred percent (100%) of the estimated cost of the Work, both executed by SPCALA or SPCALA's contractor, as Principal, and by a surety authorized to do business in California as a Surety. Said bonds shall name City as a joint obligee with SPCALA. Nothing contained herein shall be deemed to release SPCALA from the duty to keep the Property free of liens. The Performance Bond shall remain in effect until the expiration of the statutory period for filing liens or stop notices, or until the Property is free from the effect of such liens or stop notices, if same have been filed.

E. All contracts entered into by SPCALA relating to the Property or the Work or the use of the Property shall contain the following statement:

"This agreement/contract shall in no way bind the City of Long Beach, its officials or employees, nor obligate them for any costs or expenses whatsoever under this agreement/contract, or which are in any manner connected with the subject matter of this agreement/contract."

F. SPCALA shall notify City at least twenty (20) days prior to beginning the Work to enable City to post and record a Notice of Non-responsibility.

G. City shall not be obligated to make any capital improvements or alterations in or about the Property.

H. On the expiration or sooner termination of this Lease, the Facility and all other improvements to the Property shall become the property of City at no cost to City.

I. Other than the Work, SPCALA shall not make any other improvements to the Property without the prior written approval of City. City may withhold approval if the proposed improvements will materially increase Operating Expenses or if they will adversely affect the Lease-Back in City's sole opinion. If City approves the construction of other improvements, then SPCALA shall construct the improvements in accordance with plans approved by City's Department of Planning and Building acting in its municipal capacity and not in its capacity as a lessor of property and approved by City's Department which approval from the Department may not be unreasonably withheld or delayed. In the event of any subsequent improvements contemplated under this paragraph, SPCALA shall comply with all applicable codes, ordinances, regulations, and requirements for permits, licenses, and approvals. In addition, the provisions of Section 6(B), (C), (D), (E), (F), and (H) and Section 7 shall apply to the construction. Following construction the definition of Facility shall include the Work and all newly built improvements.

J. City's approval for the construction of new improvements, once given, shall not be construed to be approval of any subsequent or other request for approval of construction of improvements.

7. Liens.

A. SPCALA shall keep the Property free of any mechanic's or materialman's liens for any work done, labor performed, or material furnished by or for SPCALA relating to the Property. SPCALA shall defend, indemnify and hold City, its officials and employees harmless from and against all damages, claims, demands, causes of

action, liens, liability, loss, costs, and expenses including reasonable attorney's fees) of whatsoever kind for any such work done, labor performed, or materials furnished on the Property except to the extent the conduct of the City contributed to said damages. It is the intent of the parties hereto that each party shall be responsible for all such costs, losses and liabilities based upon their comparative fault.

B. In addition to Subsection 7(A), if a mechanic's or materialman's lien is imposed on the Property as a result of construction or repair, then SPCALA shall:

- (i) record a valid release of lien; or
- (ii) deposit with City cash in an amount equal to 125% of the amount of the lien and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder's claim; or
- (iii) procure and record a lien release bond in accordance with California Civil Code Section 3143 issued by a surety authorized to do business in California.

C. On completion of the Work, SPCALA shall file a Notice of Completion in the Official Records of the County Recorder of Los Angeles County.

8. Taxes.

A. SPCALA acknowledges that this Lease may create a possessory interest subject to taxation and that SPCALA may be subject to payment of taxes levied on such

interest. SPCALA shall pay before they become delinquent all taxes levied against the Property and provide proof of payment to City within ten (10) days after City's request therefor.

B. SPCALA shall pay before they become delinquent all taxes, assessments, license fees, and other charges levied on SPCALA's personal property, equipment, furnishings or trade fixtures installed or located on the Property and provide proof of payment to City within ten (10) days after City's request therefor.

9. Insurance.

A. As a condition precedent to the effectiveness of this Lease, SPCALA shall procure and maintain, at SPCALA's cost, from an insurer admitted in California or having a rating of A:VIII or better by A.M. Best & Company the following insurance:

(i) Comprehensive General Liability insurance including business interruption and products coverage with a combined single limit of at least Three Million Dollars (\$3,000,000.00) for each occurrence or Five Million Dollars (\$5,000,000.00) general aggregate. City, its officials, employees and agents shall be covered as additional insureds with respect to liability arising from activities performed by or on behalf of SPCALA on the Property. Said insurance shall be primary insurance with respect to City and shall contain a cross liability endorsement.

(ii) "All Risk" property insurance in an amount sufficient to cover the full replacement cost of SPCALA's personal property, improvements and equipment on



the Property. City shall be named as an additional insured under a standard loss payable endorsement.

(iii) Upon the execution of this Lease, SPCALA shall deliver to City certificates of insurance with original endorsements evidencing the coverage required by this Lease. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete certified copies of all policies at any time.

(iv) Said insurance shall contain an endorsement requiring thirty (30) days' prior written notice from insurers to City before cancellation or change of coverage.

(v) Said insurance may provide for such deductibles or self-insured retention as may be acceptable to City's Risk Manager. In the event such insurance does provide for deductibles or self-insured retention, SPCALA shall fully protect City, its officials, and employees in the same manner as these interests would have been protected had the policy or policies not contained deductibles on retention provisions. With respect to damage to property, City and

(vi) SPCALA hereby waive all rights of subrogation against each other but only to the extent that collectible commercial insurance is available for said damage.

(vii) Not more frequently than every three (3) years, if in the opinion of City or of an insurance broker retained by City, the amount of the foregoing insurance

coverage is not adequate, SPCALA shall increase the insurance coverage as reasonably requested by City.

(viii) The procuring of said insurance shall not be construed as a limitation on SPCALA's liability or as full performance on SPCALA's part of the indemnification and hold harmless provisions of this Lease; and SPCALA understands and agrees that, notwithstanding any insurance, SPCALA's obligation to defend, indemnify and hold City, its officials and employees harmless hereunder is for the full amount of any damage, cause of action, loss, expense, cost, or liability caused by the condition of the Property or in any manner connected with or attributed to the acts or omissions of SPCALA, SPCALA'S, agents, employees, licensees, invitees, or visitors, or the operations conducted by SPCALA, or SPCALA's use, misuse or neglect of the Property.

(ix) Any modification or waiver of the insurance requirements herein shall only be made with the written approval of the City's Risk Manager or designee.

(x) City makes no representation or warranty that the limits or forms of coverage of insurance specified herein are adequate to cover SPCALA's property, liability, or obligations under this Lease.

B. In the event of a loss to the Property or Facility, and such loss is covered by City's property insurance, SPCALA shall pay to City one-half ( $\frac{1}{2}$ ) of the deductible, which payment shall not exceed \$25,000.00, regardless of who or what caused the loss or where on the Property the cause originated.

10. Utilities.

A. SPCALA shall arrange and pay for the installation and use of utilities, including but not limited to gas, electricity, and trash disposal, on or to the Property, and City shall arrange and pay for the use of water and sewer services to the Facility. City and SPCALA shall each pay for their own costs for telephone installation and use.

B. There shall be no abatement or refund of rent and City shall not be liable in any respect for the inadequacy, stoppage, interruption, or discontinuance of any utility service provided by it in its municipal capacity.

11. Maintenance.

A. Except as provided in the Lease-Back or elsewhere in this Lease, SPCALA shall, at its cost and to the satisfaction of City, maintain the Property (including the Common Areas) in good condition, in substantial repair, in a safe, clean, sanitary condition, and in compliance with applicable laws. SPCALA shall use its best efforts to notify City of the appearance of graffiti within twenty-four (24) hours after it appears. SPCALA's duty to maintain shall include but not be limited to the duty to repair and replace the improvements as needed provided that SPCALA's cost to replace shall not exceed the amount of SPCALA's insurance, as required hereunder. If SPCALA fails to maintain the Property, City may notify SPCALA of said failure. If SPCALA fails to correct the situation within thirty (30) days thereafter or such longer period as may be established by City, then City may make the necessary correction and the cost thereof, including but not limited to the cost of labor, materials, equipment and administration, shall be paid by SPCALA as additional rent within

ten (10) days after receipt of a statement of said cost from City. City may, at its option, choose other remedies available herein or by law. SPCALA hereby waives to the extent permitted by law any right to make repairs at the expense of City or to vacate the Property in lieu thereof as may be provided by law.

B. City shall have no obligations with respect to maintenance of the Property, except as stated in the Lease-Back.

12. Restoration. SPCALA shall promptly notify City of damage or destruction to the Facility and the date of same. SPCALA shall promptly make proof of loss and proceed to collect all valid claims that SPCALA may have against insurers or others based on such damage or destruction. All amounts recovered as a result of said claim shall be used first for the restoration of the Facility, which SPCALA shall promptly begin and diligently pursue so that the Facility is restored to substantially the same condition as it was in immediately before such damage or destruction. If existing laws do not permit restoration, then SPCALA may terminate this Lease by giving prior notice to City. Restoration shall proceed in accordance with the provisions of Section 6 of this Lease.

A. There shall not be an abatement or refund of rent during any period of restoration.

B. If the repair, reconstruction or restoration requires longer than one hundred twenty (120) days or if the insurance proceeds will not be sufficient to cover the cost of repair, reconstruction or restoration, then City may elect to repair, reconstruct or restore and the Lease shall continue in full force and effect or City may elect not to repair.

reconstruct or restore and the Lease shall terminate. If City elects to repair, reconstruct or restore, then City shall not be required to expend sums therefor in excess of insurance proceeds received by City by reason of the casualty. If City repairs, reconstructs or restores, then SPCALA's rent under this Lease shall be abated proportionately as of the date of the casualty with the degree to which SPCALA's use of the Facility is impaired during such repair, reconstruction or restoration. SPCALA shall not be entitled to any compensation or damages for loss in the use of the whole or any part of the Facility and any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

C. In the event the Facility cannot be repaired or restored, then City and SPCALA shall divide all insurance proceeds received on a pro rata basis in accordance with their respective percentage of occupancy of the Facility.

13. Condemnation.

A. If the whole of the Property, Facility or improvements is taken by right of eminent domain or otherwise for any public or quasi public use, then when possession is taken thereunder by the condemnor or when SPCALA is deprived of practical use of the Property, Facility or improvements, whichever date is earlier, this Lease shall terminate. If there is a partial taking so that the remaining portion of the Property or improvements thereon cannot be restored to an economically feasible operation of a comparable kind to that which existed prior to the taking, then this Lease shall, at SPCALA's option, terminate as of the time when possession was taken by the condemnor or when SPCALA was deprived of practical use of the Property, whichever date is earlier.

B. If there is a taking by right of eminent domain, the rights and obligations of the parties with reference to the award and the distribution thereof shall be determined in accordance with this Section. The award shall belong to and be paid twenty percent (20%) to City and eighty percent (80%) to SPCALA.

14. Nondiscrimination. Subject to applicable federal and state laws, rules, and regulations, SPCALA shall not discriminate against anyone on the basis of age, sex, sexual orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry, national origin, disability, handicap, or Vietnam Era veteran status in the use of the Property.

15. Assignment. SPCALA shall not assign or transfer this Lease or any interest herein nor sublease the Property or Facility or any part thereof to anyone other than the Lease-Back tenant. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership unless said receivership is sought by City. Assignment of the Lease-Back either by SPCALA or by a trustee in bankruptcy shall be a material non-curable breach of this Lease, entitling the non-breaching party to terminate this Lease immediately without the necessity of notice. In the event of assignment or transfer, voluntarily or involuntarily or by operation of law, without the prior approval of City, such transfer shall be voidable at City's election and, if avoided by City, shall convey no interest and shall constitute a default of this Lease. However, this provision shall not apply in the event the SPCALA is acquired by or merges with an entity whose purposes are similar to the SPCALA.

16. Indemnification. SPCALA shall defend, indemnify and hold harmless City, its officials and employees from all claims, demands, damage, causes of action, losses, liability, costs, and expenses (including reasonable attorney's fees) of any kind or nature whatsoever which City, its officials or employees may incur for injury to or death of persons or damage to or loss of property occurring in, on, or about the Property, arising from the condition of the Property, the alleged acts or omissions of SPCALA, its officers, employees or agents, the occupancy, use, or misuse of the Property by SPCALA, its officers, employees, agents, licensees, patrons, or visitors, or any breach of this Lease.

Except as otherwise provided in the Lease-Back and notwithstanding anything to the contrary herein contained, SPCALA shall have no obligation to defend, indemnify or hold harmless City, its officials or employees for any claims, demands, damage, causes of action, losses, liability, costs, and expenses (including reasonable attorney's fees) of any kind or nature whatsoever arising from any act or failure to act by the City, the City's occupancy of any portion of the Property or with respect to requirements or obligations uniquely applicable to City or cities in general which SPCALA has not otherwise expressly agreed to perform.

17. Default.

A. The occurrence of any of the following acts shall constitute a default by SPCALA:

(i) Failure to pay rent when due if the failure continues after three (3) days' written notice to SPCALA;

(ii) Abandonment of the Property, providing that failure to occupy

or operate the Facility for thirty (30) consecutive business days shall be deemed an abandonment except for causes of force majeure as described in Section 30;

(iii) Any attempted assignment, transfer, or sublease in violation of Section 15;

(iv) Failure to maintain or pay for all necessary permits and business licenses required by the City of Long Beach in its municipal or regulatory capacity;

(v) Failure to pay when due all fees and charges for refuse service, gas, or other utility or service provided by the City of Long Beach in its municipal capacity;

(vi) Failure to report or pay when due to the City of Long Beach in its municipal or regulatory capacity all applicable sales tax, transient occupancy taxes, utility use taxes, or other excise taxes, if applicable;

(vii) The making by SPCALA of any general arrangement or general assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of SPCALA's assets located at the Property or of SPCALA's interest in this Lease, or the attachment, execution or other judicial seizure of substantially all of SPCALA's assets located at the Property or of SPCALA's interest in this Lease, or where SPCALA becomes a "debtor" as defined in any bankruptcy laws. If any provision of this subpart is contrary to law, such provision shall have no force or effect;

(viii) Failure to perform any term, covenant or condition of this Lease, other than those set forth in sub-sections (i), (ii) and (iii) of this section, shall not constitute a default unless such default is not cured within thirty (30) days after receipt by SPCALA of



written notice from the City specifying such default. If the default cannot be reasonably cured within such thirty-day (30) period, SPCALA shall still not be in default if SPCALA begins to cure within such thirty-day (30) period and diligently prosecutes such cure to completion;

(ix) The failure by SPCALA to perform any of the covenants, conditions or provisions of Section 15 ("Assignment") Section 17(A) (ii) (abandonment), and Section 17(A) (vii) (insolvency), all of which are hereby deemed to be material, non-curable defaults without the necessity of any notice by City to SPCALA thereof;

(x) The parties mutually agree that and this Lease is and shall be mutually dependent on the Lease-Back, and a default by SPCALA under the Lease-Back shall be a material non-curable default under this Lease and termination of the Lease-Back by SPCALA or rejection of the Lease-Back by SPCALA (or by a trustee in bankruptcy) in a bankruptcy proceeding shall also be a material non-curable default under this Lease, all of which shall entitle City to terminate this Lease immediately without the necessity of notice thereof by City to SPCALA.

B. City shall not be in default unless City fails to perform obligations required of City under this Lease within a reasonable time, but in no event later than thirty (30) days after notice by SPCALA to City specifying City's failure to perform such obligation provided, however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance, then City shall not be in default if City begins performance within such 30-day period and thereafter diligently pursues same to completion.

18. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

19. Re-entry. SPCALA shall peaceably deliver possession of the Property to City on the date of termination of this Lease, and whatever the reason for termination. On giving notice of termination to SPCALA, City shall have the right to re-enter and take possession of the Property on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings. Termination of this Lease and re-entry by City shall in no way alter or diminish any obligation of SPCALA under this Lease and shall not constitute an acceptance or surrender. SPCALA hereby waives any right of redemption under any existing or future law in the event of eviction from or dispossession of the Property for any reason or in the event City re-enters and takes possession of the Property in a lawful manner.

20. Waiver by City. Any waiver by City of any default or breach of any one or more of the terms, covenants, or conditions of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease, nor shall failure on the part of City to require exact and complete compliance with any of the terms, covenants, or conditions of this Lease be construed as in any manner changing the terms, covenants, or conditions hereof or prevent City from enforcing the provisions hereof, nor shall the conduct of the parties be deemed to change or modify the terms, covenants, or conditions of this Lease. No delay, failure, or omission of City to re-enter the Property, to insist on strict enforcement of any term,

covenant, or condition, or to exercise any right, power, privilege or option arising from any breach or default shall impair any such right, power, privilege or option or be construed as a waiver of or acquiescence in such breach of default or as a relinquishment of any right, power, privilege or option. The acceptance of delinquent rent by City shall not constitute a waiver of any other breach or default but shall only constitute a waiver of timely payment for the particular rent payment involved. No notice to SPCALA shall be required to restore "time is of the essence" after the waiver by City of any breach or default. No right, power, privilege, option or remedy of City shall be construed as being exhausted by the exercise thereof in one or more instances.

21. Waiver by SPCALA. Except to the extent of available insurance coverage, City shall not be liable to SPCALA for and SPCALA hereby waives all claims against City, its officials and employees for loss, theft, or any damage to SPCALA or SPCALA's personal property on the Property, for loss or damage to SPCALA's business, or injury to or death of persons on or about the Property from any cause, except City's gross negligence or willful misconduct. SPCALA acknowledges that it is familiar with California Civil Code Section 1542 which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

And, SPCALA hereby releases City from any unknown claims and waives their rights under Section 1542. This waiver is personal to SPCALA as an entity and nothing herein contained shall be deemed a waiver of the rights of others with respect to which SPCALA has no right to waive or otherwise compromise their rights.

22. Abandoned Personal Property. If SPCALA abandons the Property or is dispossessed thereof by process or law or otherwise, SPCALA shall be deemed to have abandoned any personal property belonging to SPCALA left on the Property forty-five (45) days after the date of abandonment or dispossession, and title to said personal property shall be deemed to have been transferred to City. City shall have the right to remove and to dispose of said personal property without liability therefor to SPCALA or to any person claiming under SPCALA, and shall not need to account for its disposal. SPCALA hereby designates City's City Manager as its attorney-in-fact to execute and deliver any documents that are required to dispose of said personal property and transfer title thereto.

23. Quiet Possession. If SPCALA pays the rent and performs all of the covenants and conditions of this Lease, SPCALA shall have quiet possession of the Property for the term hereof subject to the covenants and conditions of this Lease.

24. Right of Access. City shall have the right of access to the Property at all reasonable times and, in emergencies, at any time and, if SPCALA is not present to give access during emergencies, then City may forcibly enter the Property and any such entry shall not in any circumstances be construed or deemed a forcible or unlawful entry of the Property. SPCALA shall not be entitled to compensation or abatement of rent for any