

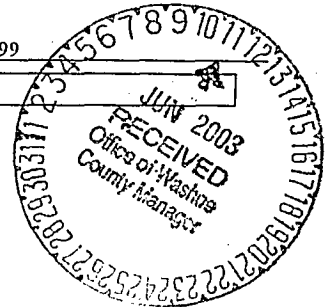
# WASHOE COUNTY

## Department of Public Works

"Dedicated to Excellence in Public Service"

TOM GADD, Public Works Director

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### BOARD OF COUNTY COMMISSIONERS AGENDA ITEM

DATE: June 6, 2003  
TO: Board of County Commissioners  
FROM: Tom Gadd, Public Works Director *SG*  
SUBJECT: *Approval of Lease Payment Agreement and Lease between Washoe County and the Nevada Humane Society*

### RECOMMENDATIONS

It is recommended that the Board of County Commissioners execute the attached Lease Payment Agreement between Washoe County and the Nevada Humane Society for repayment of financing the construction of and supplemental lease payments for space to be occupied by the Nevada Humane Society for the Regional Animal Services Shelter. It is further recommended that the form of the lease agreement attached to the lease payment agreement also be approved.

### BACKGROUND

In November 2002, the electors of Washoe County approved a ballot question authorizing the issuance of general obligation bonds to fund the construction of a regional animal services shelter. The voters also approved an increase in property taxes for the operations of the shelter. The County intends to issue \$13.325 million of bonds to pay the costs of designing and constructing the new facility. The Nevada Humane Society has agreed to make a series of lease payments which will be used by the County to retire \$2.575 million of the bonds, plus \$158,894 in interest. The Lease Payment Agreement creates contractual cash flow to repay the principal and interest on the bonds.

As collateral for the Lease Payment Agreement, the Nevada Humane Society has also agreed to pledge and hold in reserve up to \$2.8 million in market value of assets from its endowments held in trust.

Exhibit "A" of this document is a standard County lease agreement that covers one 15-year and two additional 10-year optional renewal terms for a total of 35 years for space in the regional animal services shelter.

### FISCAL IMPACT

Approval of the Lease Payment Agreement will permit the County to offer to lease space to the Nevada Humane Society for (15) fifteen years and will provide the necessary collateral for the bonds. The Humane Society will pay ten semi-annual payments sufficient to repay the County's \$2.575 million medium term bond issue. The attached lease payment agreement also permits the County to lease space to the Nevada Humane Society for an additional twenty years at the Humane Society's option. If the lease is executed, it is anticipated the Humane Society will make supplemental lease payments sufficient to pay the operational and maintenance expenses of the leased space.

#### Attachment

cc: Michelle Poché, Assistant County Manager  
John Sherman, Finance Director  
Paul Lipparelli, Deputy District Attorney

*A-6/17/03*  
*new 13C*

**WASHOE COUNTY/NEVADA HUMANE SOCIETY  
LEASE PAYMENT AGREEMENT**

This Washoe County/Nevada Humane Society Lease Payment Agreement (the "Lease Payment Agreement") is entered into as of the 17<sup>th</sup> day of June, 2003 by and between Washoe County, Nevada (the "County") and the Nevada Humane Society ("NHS") a not for profit corporation organized under the laws of the State of Nevada, (the County and NHS are herein together the "Parties"):

**WHEREAS**, County will construct and be the sole owner of the facility to be known as the Regional Animal Services Shelter, (or known by such other name as provided in Exhibit A hereto) located on Longley Lane in the City of Reno, Washoe County, Nevada, the purpose of which will be to house a consolidated regional animal services agency and related animal shelter (the "Facility"); and

**WHEREAS**, NHS intends to commit the amount of \$2,500,000.00, plus interest and associated financing costs (the "NHS Commitment") to the construction of the Facility to further the purposes of this Lease Payment Agreement; and

**WHEREAS**, in exchange for the NHS Commitment, the County intends to offer a portion of the space in the Facility for lease to NHS (the "NHS Space") to conduct operations of NHS and to further the mutual purposes of the Parties, and the County also intends to permit NHS to use its naming rights with respect to the NHS Space as a fundraising tool, as more fully described herein, subject, however, to the covenant in Section 10 hereof; and

**WHEREAS**, NHS desires to have the right to lease the NHS Space from County for such purposes; and

**WHEREAS**, the Parties are in the process of negotiating a definitive "Lease Agreement" in connection with this Lease Payment Agreement, a draft of which is attached hereto as Exhibit "A,"; and

**WHEREAS**, the County is about to incur significant obligation with respect to the Facility by, among other things, issuing \$13.325 million of bonds to pay the costs of construction of the Facility (the "Facility Bonds"); and

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WHEREAS, \$10.75 million of the Facility Bonds were approved by the voters of the County and will be repaid by an ad valorem property tax on all of the taxable property in the County (the "County Bonds"); and

WHEREAS, \$2.575 million of the Facility Bonds (the "Bonds") will not be paid with a property tax but will be repaid by NHS in connection with the NHS Commitment and the Parties' obligations as provided in this Lease Payment Agreement; and

WHEREAS, in order to issue the bonds in a financially prudent manner, the County must have a secure, contractual cash flow to repay the principal of and interest on the Bonds (the "Security"); and

WHEREAS, one of the purposes of this Agreement is to provide that Security.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN AND THE SUM OF \$1.00 HEREWITH PAID TO NHS BY THE COUNTY, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION MUTUALLY EXCHANGED, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Definitions. Unless otherwise defined herein, the capitalized terms used herein have the meanings ascribed to those terms in this Section:

A. "Base Lease Payments" means the NHS Base Lease Payment Amounts as provided in the NHS Base Lease Payment Schedule furnished as stated in Section 6 hereof.

B. "Bonds" means the series of medium term bonds of the County in the aggregate principal amount of \$2,575,000 issued by the County to provide a portion of the funds necessary to construct and improve the Facility. The Bonds will be issued simultaneously with the issuance of the County Bonds.

C. "Collateral" shall mean the collateral to be pledged as Security by NHS, as described on Exhibit "B" hereto.

D. "County Space" means all space in the Facility which is estimated by the County to be exclusively used by the County plus all space in the Facility which is expected by the County to be leased to any entity other than NHS.

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E. "Common Space" means all space in the Facility that is not "County Space," or "NHS Space," and includes, by way of an example, common areas used for egress and exit from the Facility, the parking area, private roads, lavatories that are accessible to the public and both County and NHS employees and agents (but not lavatories that are located such that they can only be used by users of the spaces exclusively used by NHS or the County), and mechanical, heating, and air conditioning space in the building which is used to service Common Space, County space and NHS Space.

F. "Determined by the County" or "Estimated by the County" shall mean a reasonable determination or estimate by the County Director of Public Works or the County Finance Director, as the case may be, made pursuant to this Lease Payment Agreement. If NHS disagrees with any such determination or estimate by the Director of Public Works or the County Finance Director, NHS is entitled to appeal the determination to the Board of County Commissioners. If NHS disagrees with the decision rendered by the by the Board of County Commissioners, NHS is entitled to appeal to an arbitrator or mediator selected in accordance with the provisions of Section 18 hereof.

G. "Facility Costs" shall mean all costs of development and construction of the Facility, including all costs delineated in the definition of Estimated Cost of NHS Space in subsection H below.

H. "Estimated Cost of NHS Space" means the sum of the following as reasonably from time to time Estimated by the County:

- (i) all cost of construction and improvement of NHS Space;
- (ii) NHS's Pro Rata Share of the costs of construction and improvement of Common Space;
- (iii) NHS's Pro Rata Share of the costs of all incidental expenses of the Facility, such as architectural costs, engineering expenses, permitting expenses, expenses of bringing utilities to the site and any other reasonable and incidental expenses as Determined by the County.

I. "Initial Construction Fund Deposit" means the sum of \$2.5 million derived from the proceeds of the Bonds, less the amount by which the issuance cost of the

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Bonds exceeds \$75,000.00 or plus the amount by which the issuance costs of the Bonds is less than \$75,000.00. For this purpose, "issuance costs" includes all reasonable and customary amounts paid to cover Bond issuance costs and original issue discount, if any, as reasonably Determined by the County; provided, however, that the County shall make reasonable prior disclosure of the probable amounts of issuance costs to NHS should such amounts differ substantially from the amounts delineated in the Recommendation to the Board of County Commissioners from the County Director of Finance, dated as of March 14, 2003, regarding the approval of a resolution setting a public hearing for April 8, 2003 concerning the issuance of the Bonds.

J. "NHS Space" means space in the Facility which is estimated by the County to be leased to NHS.

K. "NHS's Pro Rata Share" shall mean a percentage Determined by the County by dividing the actual (or estimated, as the case may be at the time of making the calculation) square footage of the NHS Space by the sum actual (or estimated, as the case may be) the square footage of NHS Space plus the square footage of County Space; provided, however, that to the extent NHS's Pro Rata Share is based upon an estimate, NHS and the County, as the case may be, shall each have the right to adjustment of such amounts when actual costs are determined.

L. "Supplemental Lease Payments" means the additional lease payments owed by NHS for leasing the Facility as provided in Section 4(C) hereof and Exhibit A hereto.

Section 2. Financing of Construction of Facility. The County shall finance construction of the Facility through the issuance of the Facility Bonds including the Bonds. The County and NHS recognize that the County will be issuing the Bonds and incurring the expenses of constructing the Facility in part on reliance on the NHS Commitment and the obligations assumed by NHS herein to make the Base Lease Payments, which the County shall use to pay the principal of and interest on the Bonds. Consequently, NHS agrees that after the Bonds are issued, its obligation to pay the Base Lease Payments is unconditional and irrevocable regardless of any breach hereof or of any other agreement by the County or default hereunder or under any other agreement by

the County, and regardless of whether or not the County and NHS successfully negotiate the Lease Agreement and regardless of whether or not NHS in fact enters into the Lease Agreement and leases a portion of the Facility; provided, however, that in so agreeing, NHS is not waiving any of its legal rights to bring a lawsuit for damages or specific performance for any default or defect in performance by the County under this Lease Payment Agreement or any related mutual undertaking.

Section 3. "Design and Construction."

A. Design and construction of the Facility shall be undertaken by the County with consultation with NHS with respect to NHS Space and Common Space.

B. Subject to the following sentence, the County and NHS agree that NHS will be primarily responsible for making design decisions with respect to the NHS Space. The County shall be entitled to change any of NHS's design decisions if it determines that:

(i) the design decision will demonstrably and materially adversely affect the County's use of County Space or Common Space or will demonstrably and materially increase the cost of County Space, the cost of Common Space or the expenses of operating and maintaining the Facility; or

(ii) the design decision is demonstrably and materially inconsistent with the design of the balance of the Facility and would not be in the best interest of the Facility as a whole; or

(iii) the design decision will cause the Estimated Cost of NHS Space to exceed the sum of the Initial Construction Fund Deposit plus the amount of any additional funds NHS deposits into the Construction Fund.

In the event it is Determined by the County to change any of NHS's design decisions as described above, the County shall first inform NHS in writing and shall cooperate with NHS in reaching a resolution of the matter in keeping with the purposes of this Lease Payment Agreement.

C. If at any time during the design or construction of the Facility, the Estimated Costs of NHS Space exceeds the Initial Construction Fund Deposit, the County shall promptly so notify NHS, and either

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(i) NHS shall deposit the difference between the Estimated Cost of NHS Space and the Initial Construction Fund Deposit into the Construction Fund to the extent it has not already made such a deposit; or

(ii) The County shall have the option of making a change in the design or construction of the Facility to reduce the Estimated Cost of NHS Space to the amount of the Initial Construction Fund Deposit.

Again, in the event it is Determined by the County to change any of NHS's design decisions, the County shall first inform NHS in writing of such determination and shall cooperate with NHS in reaching a resolution of the matter in keeping with the purposes of this Lease Payment Agreement.

D. After completion of construction, the County will own the building and the land upon which it is constructed, including surrounding land and parking area. NHS, however, will hold title to any additional furniture and equipment it supplies for the Facility, excluding furniture and equipment the cost of which is paid with proceeds of the Bonds as provided in Section 9(a) hereof, and excluding any fixtures. The County will own all other furniture, fixtures and equipment in the Facility.

Section 4. Right to Lease.

The County shall offer to NHS, through the Lease Agreement, the right to lease space in the Facility in accordance with the following terms:

A. The minimum square feet (not including common areas) offered to be leased is 24,000 square feet.

B. The term of the lease shall be for not less than 15 years following receipt of a certificate of occupancy for the Facility from the City of Reno, and NHS shall have the option of renewing the lease for the same amount for two additional separate renewal terms of 10 years, as delineated in the agreed minimum lease terms set forth in Exhibit "A" hereto.

C. The Supplemental Lease Payments due for the first five years of the Lease shall be at least annually Determined by the County and shall be an amount which the County determines is sufficient:

(i) to pay all of the operational expenses of the County related to NHS Space plus

(ii) to pay NHS's Pro-Rata Share of all expenses of the County related to common areas.

Such expenses shall include, without limitation, any and all of the following: expenses for heating, ventilation and air conditioning, water, sewer and other utilities, insurance (property and liability) maintenance and janitorial services expenses, security expenses, expenses for maintenance of common area furnishings, and the amortized cost of any subsequent capital improvements, including fixtures, equipment and furnishings, to NHS Space or common areas (such capital expenses shall be amortized over their expected useful life, as Determined by the County). The County shall at least annually estimate the amount of the Supplemental Lease Payments due in the ensuing year and such Supplemental Lease Payments shall be paid in 12 equal monthly installments on the first day of each month, commencing with the date the certificate of occupancy for the Facility from the City of Reno is received by the County, and changing on the first day of each month after which the County has redetermined the Supplemental Lease Payments. Not less than 10 days' notice of any change in Supplemental Lease Payments shall be provided to NHS. Except for the initial period of 12 months or less, the County shall endeavor to set Supplemental Lease Payments for 12 month periods corresponding to its fiscal year (July 1 – June 30). If costs increase substantially during a year, the County shall have the option of increasing the Supplemental Lease Payments due for the remainder of that year to reflect the increase in costs; provided, however, that the County shall provide reasonable evidence of the amounts of all costs contained within the calculation of Supplemental Lease Payments to NHS promptly upon NHS's written request therefor. In any event, the County shall review its costs and the Supplemental Lease Payments paid with respect to each of its fiscal years by not more than sixty (60) days after the end of that fiscal year, and if it is Determined by the County that the Supplemental Lease Payments were in excess of the costs listed in (i) and (ii) above, the County shall apply the excess as a credit to the following fiscal year's Supplemental Lease Payments; conversely if it is Determined by the County that the Supplemental

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Lease Payments for the year were less than an amount sufficient to pay the expenses listed in (i) and (ii) above, the County shall increase the following year's Supplemental Lease Payments by an amount sufficient to make up for such deficiency; provided, however, that the County shall provide reasonable evidence of the amounts of all costs contained within the calculation of Supplemental Lease Payments to NHS promptly upon NHS's written request therefor.

D. The Supplemental Lease Payments after the first five years shall be determined by negotiation among the parties; but at a minimum shall be sufficient to pay the expenses described in C (i) and C (ii) of this Section.

E. The Parties will cooperate in connection with obtaining insurance of the Facility so that NHS is named as additional insured or otherwise sufficiently protected in the event of loss to, destruction of or damage to the Facility and other adequate provision for the protection of NHS in the event of condemnation, damage or destruction, required relocation, or other similar event with respect to the Facility.

F. NHS will be granted naming rights for the NHS Space for purposes of fundraising and promotion, and NHS will also be granted rights to offer, plan, direct and engage in (i) sponsorship opportunities; (ii) drawings and telethon segments; (iii) product display and distribution; (iv) cause-related marketing (*e.g.*, hallway billboards within the NHS Space or in other locations as NHS may properly arrange); (v) demonstrations, workshops and presentations, and other special events; (vi) donor solicitation and cultivation; (vii) press conferences, distribution of newsletters, pamphlets and other NHS material; and (viii) other media events and tours of and in connection with the Facility. All such rights of NHS must conform to the mutual purposes of the Lease Payment Agreement and the Lease and, to the extent necessary and reasonably requested by the County, coordinated with the County. Naming rights will not be used in a manner that would violate Section 10 hereof, and NHS agrees to consult with the County with respect to any proposed naming rights agreement before it is executed. The County may request an opinion of nationally recognized bond counsel on the effect of any such proposed agreement on the exempt status of interest on the Bonds or the County Bonds under federal income tax laws, and the advice rendered in such an opinion shall be

binding on the parties unless a private letter ruling or similar written advice is obtained from the Internal Revenue Service.

G. NHS will be granted reasonable control over the NHS Space.

H. The Parties will cooperate in developing and determining the extent of necessary additions, alterations and other improvements.

I. Adequate provision for parking for NHS employees will be provided in keeping with the purposes of the Lease.

J. The County will grant NHS a covenant of quiet enjoyment to benefit NHS as tenant.

K. NHS and the County will comply with all terms of the grant of the site of the Facility to the County by the City of Reno.

L. The other terms of the Lease shall be provided in Exhibit "A" unless otherwise mutually agreed.

The County hereby agrees to make an offer to NHS to lease the NHS Space pursuant to the above terms and the terms of the Lease Agreement as delineated on Exhibit "A" hereto and as otherwise agreed by the Parties. The County's future offer to lease space to NHS shall remain open for sixty (60) days, commencing on the date on which the County formally offers particular space in the facility to NHS. This agreement does not obligate NHS to accept such offer and enter into a lease of any space in the Facility; however, if the Bonds are issued, this Lease Payment Agreement obligates NHS, regardless of whether it enters into a lease for space in the Facility to make payments of the NHS Base Lease Payments. If NHS determines to not enter into the lease, it shall continue to owe the NHS Base Lease Payments in consideration of the other terms of this Lease Payment Agreement; provided, however, that in so agreeing, NHS is not waiving any of its legal rights to bring a lawsuit for damages or specific performance for any default of defect in performance by the County under this Lease Payment Agreement or any related mutual undertaking..

Section 5. Bond Issuance. The Parties hereto agree that County may issue the Bonds in one or more issues at such time or times as the County determines. Unless otherwise agreed to by the Executive Director of NHS (the "Executive Director") and the

Director of Finance of the County (the "County Finance Director"; together with the Executive Director, the "Directors"), the County shall structure the Bond maturity schedule to have substantially level debt service payments over a term of not exceeding five (5) years, and the Bonds shall bear interest at such rates, mature at such times (within five (5) years), be subject to prior redemption (or not subject to redemption) and otherwise have such terms and conditions as are provided in the ordinance of the County authorizing their issuance and the certificates pertaining thereto.

Section 6. Schedule of NHS Base Lease Payments. Within thirty (30) days after the issuances of the Bonds or any bonds refunding any of the Bonds, the County shall provide the Executive Director with a schedule showing the principal, interest and total payments ("Debt Service Payments") due on the Bonds and such refunding bonds on each date that Debt Service Payments are payable. This schedule shall be entitled the "NHS Base Lease Payment Schedule," and the column in such schedule containing the total amount of Bond Debt Service Payments is the "NHS Base Lease Payment Amounts."

Section 7. Method of Making NHS Base Lease Payment. NHS Base Lease Payments should be made in the following manner:

A. NHS agree to pay to the County Treasurer in immediately available funds by wire or in cash or by cashier's check at the time provided below the amount shown in the NHS Base Lease Payment Schedule as the NHS Base Lease Payment Amounts. The NHS Base Lease Payment Schedule furnished as provided in Section 6 shall be considered to be an invoice for all of the NHS Base Lease Payments shown thereon, and the County will not be required to provide and will not provide any additional bills or invoices.

B. All NHS Base Lease Payments wired to the County shall be wired to such bank accounts as is specified in writing by the County Treasurer. Until otherwise directed by the County Treasurer, those payments are to be made directly to County's bank account at Bank of America; Account Number 000356040335; ABA Routing Number 122400724. All NHS Base Lease Payments made by check or in cash shall be delivered to the County Treasurer at his office for physical delivery at 1001 E. 9<sup>th</sup> Street,

Washoe County Administrative Building, Reno, Nevada 89512 or mailed to his address for U.S. Mail delivery, P.O. Box 11130, Reno, Nevada 89520 (or such other place as provided by the County in writing), accompanied by a statement indicating that the amount tendered is a NHS Base Lease Payment under this Lease Payment Agreement.

C. All NHS Base Lease Payments shall be made at a time such that each such payment is received by the bank (in the case of wire) or by the County Treasurer (in the case of a check or cash) by no later than thirty (30) days prior to the date the County is required to make the corresponding payment of Debt Service on the Bonds as shown on the NHS Base Lease Payment Schedule.

D. NHS may prepay the NHS Base Lease Payments in whole, but not in part, at any time by depositing with the County an amount Determined by the County to be sufficient to pay in full as to all principal, interest and any applicable prepayment premiums, all of the then outstanding Bonds, taking into account the interest income earned on such deposit, provided that such deposit may only be invested in non-callable federal securities (as defined in NRS 350.522) that mature at a time sufficient to pay the principal and interest on the Bonds when due.

Section 8. Consent Required for Certain Refunding or Bond Calls. The County agrees not to refund or call the Bonds without the consent of NHS if, as a result of the refunding or call, NHS Base Lease Payments are increased in the aggregate in any fiscal year.

Section 9. Accounting for Bond Proceeds; Investments; Application of Bond Proceeds. Proceeds of the Bonds will be held in a separate account or sub-account (the "Construction Fund") by the County which will not be a separate bank account. Interest income allocated according to the County's generally applied principles will be credited to NHS to reduce subsequent NHS Base Lease Payments unless NHS requests in writing that such interest be used for Facility Costs, except that any interest income earned at yield above the yield on the Bonds ("Arbitrage Earnings"), determined in accordance with the applicable Internal Revenue Service ("IRS") regulations as Determined by the County, will be retained (or may be withdrawn) by the County to make rebate payments to the United States. Amounts shall be withdrawn from the Construction Fund solely to

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pay the costs of the Facility in accordance with the terms of this Lease Payment Agreement.

A. The County may draw such amounts from the Construction Fund as are needed to pay for Facility Costs attributable to the construction of the NHS Space or NHS's Pro Rata Share of the Common Space, including mutually agreed upon furniture, fixtures and equipment for the NHS Space and common space. Such withdrawals shall be made not faster than pro rata with such withdrawals of the County Bond proceeds to pay costs of constructing and improving the Facility. No amounts may be drawn from the Construction Fund to pay the costs of the furniture, fixtures or equipment to be in County Space or for the costs of construction of the County Space. The County shall maintain adequate documentation supporting all of the expenditures from the Construction Fund paid under this Section and shall provide copies of such documentation to NHS at NHS's request, and shall provide a statement of all withdrawals to the Executive Director quarterly.

B. The County shall pay from the Bond Proceeds such amounts as represent the cost of issuing the Bonds (including any original issue discount) when needed. Unless otherwise agreed by the Directors, the cost of issuing the Bonds and the County Bonds issued on the same day as the Bonds will be pro-rated between the Bonds and the County Bonds based on relative principal amount of the respective bonds issued on the same date. The County presently estimates that the issuance costs of the Bonds will be \$75,000.00 and if the actual costs are greater or smaller, the difference will reduce or increase the Initial Construction Fund Deposit, as provided in the definition thereof. Prior to making a withdrawal pursuant to this subsection B, the County shall provide a written notification to the Executive Director of the costs to be paid with the amount to be withdrawn and a statement of the pro-rata amount then being paid by the County from the proceeds of the County Bonds.

C. NHS shall inform the County reasonably in advance of the solicitation or acceptance of donations of in-kind gifts of furniture or equipment for the NHS Space, and NHS shall coordinate with the County or its designee regarding the quality and type of such donations before acceptance.

Section 10. Tax Covenant. It is anticipated that the Bonds and the County Bonds will be issued as tax-exempt Bonds under the provisions of the Internal Revenue Code of 1986, as amended. Each of the Parties hereto agrees that it will not take any action or omit to take any action with respect to the Bonds or the County Bonds, the proceeds thereof, any of that Party's funds or the facilities financed with the proceeds of the Bonds if the act or omission (i) would cause interest on the Bonds or the County Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), or (ii) would cause interest on the Bonds or the County Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code, except to the extent such interest is required to be included in the adjusted earnings adjustment applicable to corporations under Section 56 of the Tax Code, in calculating corporate alternative minimum taxable income. This covenant is to remain in force and effect until the date in which all obligations of Parties in fulfilling the tax covenant contained in the ordinance of County authorizing issuance of the Bonds and of the County Bonds have been met. Among other things, this covenant requires that NHS maintain its status as an organization described in Section 501(c)(3) of the Code while it uses any portion of the Facility and that NHS will neither make nor allow any use of the NHS Space or any other space in the Facility to carry out any activity that is an unrelated trade or business for NHS determined by applying Sec. 513 of the Code. Any damages the County incurs as a result of a breach of this covenant by NHS shall be deemed to be Base Lease Payment defaults.

Section 11. Surplus Bond Monies. After construction is complete, the Project is occupied and the final Facility Costs and the final amount of interest earnings on amount in the Construction Fund and of the proceeds of the County Bonds is Determined by the County, if there are monies remaining in the Construction Fund unspent and not needed to pay Facility Costs, those remaining monies and any interest earned thereon shall be used to pay the next succeeding NHS Base Lease Payment Amounts.

Section 12. Cost Overruns. NHS shall not be responsible for cost overruns unless:

A. The cost overrun occurs as a result of design changes or change orders requested by NHS, in which case, if it is Estimated by the County that the Estimated Cost of NHS Space exceeds the sum of the Initial Construction Fund Deposit plus the amount of any deposits made by NHS pursuant to Sec. 3(C)(i) hereof, NHS shall immediately deposit into the Construction Fund the amount of such excess.

B. The cost overrun is not caused by either (i) a design change or change order requested by NHS or (ii) an environmental or hazardous waste abatement cost with respect to conditions that existed on the site of the Facility on the date of this Lease Payment Agreement, and it is Estimated by the County that the Estimated Cost of NHS Space exceeds the sum of the Initial Construction Fund Deposit plus the amount of any deposits made by NHS pursuant to Sec. 3(C)(i) hereof, in which case the County may make such design and construction changes as are necessary to eliminate the cost overrun in consultation with NHS.

Section 13. Security for Obligations of NHS. In order to secure its obligations to make payments of the NHS Base Lease Payments and any other amounts due hereunder, NHS hereby grants to the County a first priority security interest in the Collateral described on Exhibit "B" hereto. NHS represents to the County that the Collateral is presently free and clear of any security interests, NHS has not promised to grant any security interests in the Collateral to any other person and NHS covenants that it will not pledge, encumber or otherwise allow any other person to obtain a security interest in any of the Collateral until all of the NHS Base Lease Payments have been made in accordance with this Lease Payment Agreement. In order to evidence this security interest, NHS agrees:

A. to execute, deliver and file with the Secretary of State of the State of Nevada, a financing statement evidencing a security interest in the Collateral; and

B. to execute, deliver and file or record such other security instruments with respect to the Collateral (including control or other security agreements with respect to bank accounts and investment securities) as the County reasonably requests in order to evidence the County's security interest in the Collateral.

It is understood that NHS may substitute other property of equal value to the Collateral for the Collateral, with the prior consent of the County, such consent not to be unreasonably withheld or delayed, provided, however, that NHS shall (i) notify the County reasonably in advance of such substitution, and (ii) execute and deliver such financing statements, deeds of trust or other security agreement necessary to preserve the Security to be granted pursuant to this Lease Payment Agreement. In the event of such substitution, the County shall execute such releases or other similar documents with respect to the original Collateral as shall be reasonably requested by NHS.

Section 14. Defaults by NHS. If NHS fails to make any payment due hereunder at times specified herein, or otherwise fails to abide by the material provisions of this Lease Payment Agreement, or if any of the representations or covenants made by NHS herein are untrue in any material respect, NHS shall be deemed to be in default hereunder (an "NHS Default"). In the event it is Determined by the County that there is an NHS Default, the County shall give prompt written notice thereof, reasonably describing such default, to NHS, and, except in the event of an NHS Default with respect to the payment of money, including the NHS Base Lease Payments, NHS shall have a period of no less than thirty (30) days from receipt of such written notice to cure such default, provided however, that if such default is not capable of being cured within such thirty (30) day period, that NHS shall have a reasonable period, not in excess of 30 additional days within which to cure such default, so long as NHS is diligently pursuing a cure of such default. In the event of an NHS default in the payment of money, NHS shall have a period of not more than five (5) days within which to cure such default.

Section 15. Remedies for NHS Default. Should NHS fail to cure an NHS Default this Lease Payment Agreement may be enforced by the County by, without limitation, the following:

A. The County may advance the amount required to make up for any payment default by NHS and shall be entitled to recover from NHS the sum so advanced, plus interest from the date the payment was due at the prime rate prevailing during the period of the default, as it may change from time to time, based on such rate as published

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in the Wall Street Journal or if more than one rate is published on any day, the average of such rates, plus 2% per annum.

B. In the case of a Base Lease Payment Default or breach of Section 10 by NHS only, The County may immediately and without further notice to NHS execute and foreclose upon any or all of the Collateral in which it has a security interest pursuant to Section 13 hereof, up to the amount needed to cure the default.

C. The County may submit the issue to an arbitrator or mediator selected in keeping with the provisions of Section 18 hereof, or may sue in a court of competent jurisdiction to enforce the provisions of this Lease Payment Agreement, for damages or to obtain any other remedy that may be available in law or in equity, including specific performance of the provisions of this Lease Payment Agreement.

The provisions of this Section are not intended as a limitation on the remedies that may be available to the County in case of breach of this Lease Payment Agreement.

Section 16. Default by County. If the County breaches the terms hereof of defaults in the performance of any of the covenants it has made herein (a "County Default"), NHS shall give prompt written notice thereof, reasonably describing such default, to County, and County shall have a period of no less than thirty (30) days from receipt of such written notice to cure such default, provided however, that if such default is not capable of being cured within such thirty (30) day period, that County shall have a reasonable period, not exceeding an additional 30 days, within which to cure such default, so long as County is diligently pursuing a cure of such default.

Section 17. Remedies for County Default. If the County fails to cure a County Default after proper notice, NHS may submit the issue to an arbitrator or mediator selected in keeping with the provisions of Section 18 hereof, or may sue in a court of competent jurisdiction to enforce the provisions of this Lease Payment Agreement, for damages or to obtain any other remedy (other than any right of set-off against Base Lease Payments due hereunder) that may be available in law or in equity, including specific performance of the provisions of this Lease Payment Agreement.

The provisions of this Section are not intended as a limitation on the remedies that may be available to the NHS in case of breach of this Lease Payment Agreement, except

that NHS may not seek any right of set-off against the Base Lease Payments due hereunder.

Section 18. Arbitration or Mediation. In the event NHS elects to appeal an issue that has been Determined by the County or Estimated by the County, NHS may submit the issue to an arbitration or mediator selected pursuant to this Section 18. In addition, if either of the Parties elects to resolve an issue relating to any uncured default of the other party through arbitration or mediation, the aggrieved party shall submit such issue to an arbitrator or mediator selected pursuant to this Section 18.

A. When either party determines that a dispute has arisen, with respect to an issue Determined by the County or Estimated by the County, or with respect to a default by either party, or otherwise, the party making such determination shall notify the other and the Parties shall meet within ten (10) days thereafter to negotiate in good faith in an attempt to resolve the dispute. The party making the notification must assert in the notification all disputes then known to that party related to this Lease Payment Agreement or any other related mutual undertaking. Such notification shall be made within a reasonable time after the dispute has arisen. In no event, however, shall any notification be made after that date which is three (3) months after the party had reason to know of the facts that give rise to the dispute. If the dispute is not resolved by mutual agreement or compromise within seven (7) business days after the Parties meet regarding the dispute, then the Parties will resolve the dispute by arbitration in accordance with the following procedures:

B. Within five (5) business days after the expiration of the seven-day dispute resolution period described above, each party will designate a neutral arbitrator with at least ten (10) years' experience in commercial real estate or contractual matters. If either party fails to inform the other of the arbitrator such party has selected within such five-day period, then the arbitrator properly selected within such five-day period will conduct the arbitration. If both parties properly select an arbitrator, then within ten (10) days thereafter, the two arbitrators selected must designate a third arbitrator (hereafter, the "Arbitrator") to conduct the arbitration. The Arbitrator will have at least ten (10) years' experience in commercial real estate or contractual matters and must not have performed

services for either party within the preceding ten (10) years. Except as otherwise stated herein, the Arbitrator will resolve the dispute in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Each party may submit a written brief and other relevant documents to the Arbitrator, but no depositions or discovery may be conducted unless ordered by the Arbitrator. In no event shall the Arbitrator be permitted to allow more than three (3) depositions per party during the course of discovery. The Arbitrator will conduct a hearing in Washoe County, Nevada within thirty (30) days after being selected, and will issue a written ruling with respect to the dispute promptly. The Arbitrator will be prepared to issue a ruling no later than ten (10) days after the hearing. When prepared to issue a ruling, the Arbitrator shall first so inform the Parties, who will have ten (10) days to resolve the dispute by a binding agreement between them. If the Parties resolve the dispute, the Arbitrator will not make any award. If the Parties do not resolve the dispute in such ten-day period, the Arbitrator shall issue a written ruling on the eleventh day following the notification to the parties that the Arbitrator was prepared to issue a ruling. The Arbitrator's written decision will resolve the dispute, will include written statements of fact and conclusions of law, and will be binding on the Parties and not appealable. Each party will bear its own costs in connection with the above-described arbitration process until such time as a written ruling is issued. Thereafter, the prevailing party, as determined by the Arbitrator, will be entitled to recover all costs and reasonable attorneys' fees from the nonprevailing party. No arbitration arising out of or relating to this Lease Payment Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Lease Payment Agreement.

Section 19. Cooperation. The Parties hereto agree to cooperate to achieve the objectives hereof by furnishing such information and executing such documents as are reasonably required over the term hereof to effectuate the intent and purposes hereof, including, without limitation, any continuing disclosure agreements which may be needed under United States Securities Exchange Commission Rule 15c2-12.

Section 20. No Waiver. No failure or delay on the part of any party to this Lease Payment Agreement to enforce the provisions hereof shall operate as a waiver

thereof, nor shall a single or partial enforcement of any provision hereof preclude any other or further enforcement or exercise of any other right, power or remedy that any party of this Lease Payment Agreement may have.

Section 21. Time of Essence. Time is of the essence to this Agreement. Each Party agrees that it shall perform all of its obligations under this Lease Payment Agreement promptly when required.

Section 22. NHS's Obligations Unconditional. NHS's obligation to make or cause to be made payments under this Lease Payment Agreement is absolute and unconditional after the Bonds have been issued. NHS is not entitled to any right to set-off against any other obligation of any amounts due hereunder or under any other agreement, nor to delay making any payments due hereunder, nor to withhold any payments due hereunder on account of any breach or alleged breach of this or any other agreement by County, or on account of any other reason whatsoever. It is also understood that NHS is required to make the payments required hereunder whether or not it leases space in the Facility and whether the Facility at the NHS Space therein is partially or substantially damaged, destroyed or taken by the power of eminent domain. It is further understood that, in so agreeing, NHS is not waiving any of its legal rights to bring a lawsuit for damages or specific performance for any default or defect in performance by the County under this Lease Payment Agreement or any related mutual undertaking.

Section 23. Indemnification. The Parties hereto agree that each Party will be responsible for any liability or loss as a result of any claim, demand, cost or judgment made arising from the wrongful act or any negligent act or any negligent failure to act by that Party, or its employees, agents or servants in connection with this Agreement or any undertaking pursuant hereto. Each Party (the "Indemnifying Party") further agree to hold harmless, indemnify and defend the other Party from and against all losses, liabilities, or expenses of any nature to the person or property of another to which either may be subjected as a result of any claim, demand, action or cause of action arising out of the wrongful or negligent act, errors or omissions on the part of the employees, agents or servants of the Indemnifying Party. The Parties hereto understand and agree that neither this Section nor any other provision of this Agreement shall constitute a

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waiver by the County of any protection it has against liabilities or damages or any limitations thereon under Ch. 41 of NRS or other protections or limitations that arise by virtue of the County's status as a political subdivision of the States of Nevada, and that the County's indemnifications hereunder are limited by and subject to Ch. 41 of NRS.

Section 24. No Third Party Beneficiaries. This Lease Payment Agreement is intended solely for the benefit of the Parties hereto, and no person is intended to be or shall be construed to be a third party beneficiary of this Lease Payment Agreement.

Section 25. Successors or Assigns. This Lease Payment Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and their assigns. No assignment of this Lease Payment Agreement or any right or obligation hereunder by any of the Parties hereto shall be valid unless the other Party hereto consents to that assignment in writing. The Parties hereto hereby consent to County pledging the revenue it receives pursuant hereto to the Bonds.

Section 26. Books and Records. Each of the Parties to this Lease Payment Agreement agrees to maintain proper books and records pertaining to the Facility, the Bonds, the funds and accounts established for the payment of the Bonds and evidencing expenditure of receipt of the Bond proceeds, and the provision of the NHS Services and the County Services, and to make such books and records available for inspection by the other Party hereto during normal business hours.

Section 27. Amendments. This Lease Payment Agreement may be modified at any time by the Parties hereto, but only by a written instrument signed by each of the Parties hereto.

Section 28. Severability. If any provision of this Lease Payment Agreement is deemed to be invalid or unenforceable, the invalidity or unenforceability shall not affect the remaining provisions of this Lease Payment Agreement that can be given effect without the invalid or unenforceable provision, and the Parties hereto agree to replace the invalid or unenforceable provision with a valid provision which has as nearly as possible the same effect.

Section 29. Counterparts. This Lease Payment Agreement may be executed in one or more counterparts, each of which shall be regarded as the original and all of which shall constitute the same agreement.

Section 30. Source of Funds. Nothing herein obligates the County to make any payments other than payments from the proceeds of the Bonds and the County Bonds.

Section 31. Notices. Notices hereunder shall be effective on the date of delivery if delivered to a party hereto at the address listed in this Section, or to any new address located in Washoe County, Nevada, provided by that party by notice delivered pursuant to this Section, and shall be effective three (3) days after the date of mailing thereof if mailed by first class, postage prepaid mail, certified return receipt requested. Unless otherwise provided, notice provided to each party shall be as follows:

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If to the County:

(for physical delivery)

(for US Mail)

Washoe County, Nevada  
Attn: Director of Public Works  
1001 E. 9<sup>th</sup> Street  
Reno, NV 89512  
P.O. Box 11130  
Reno, NV 89520  
775-328-2040  
775-328-3699 (fax)

With a copy to:

Washoe County, Nevada  
District Attorney's Office-Civil Division  
50 W. Liberty (Short Tower), Third Floor  
Reno, Nevada 89501  
Attn: Assistant District Attorney, Civil  
775-337-5700  
775-337-5732 (fax)

If to NHS to:

Nevada Humane Society  
PO Box KIND  
200 Kresge Lane  
Sparks, NV 89432  
Attn: Executive Director  
775-331-5770  
775-331-8569 (fax)

With a copy to:

Michael G. Alonso, Esq.  
Jones Vargas  
100 W. Liberty Street, 12<sup>th</sup> floor  
Reno, NV 89501  
775-788-2228  
775-786-1177 (fax)

Section 32. Term. This Lease Payment Agreement shall become effective once (i) it has been accepted and executed by each of the Parties hereto and (ii) the Facility Bonds have been issued. This Lease Payment Agreement shall remain in full force and effect until the later of (x) the date on which the Bonds and any bonds issued for the purpose of refunding the Bonds have been fully paid and discharged; or (y) the date on which all of the Parties' obligations hereunder have been fully discharged.

[signature page follows]

IN WITNESS WHEREOF, the Parties to this Lease Payment Agreement have caused it to be executed by their duly authorized representatives as of the date and year written above.

NEVADA HUMANE SOCIETY

By: Mark Green  
Mark Green  
Title: President, Board of Directors

WASHOE COUNTY, NEVADA

By: David E. Humke 6/17/03  
David E. Humke  
Title: Chairman, Board of County Commissioners



Alvin Harvey  
Alvin Harvey  
Title: County Clerk

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## **EXHIBIT "A"**

### **LEASE AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada, hereinafter referred to as "Lessor," or "County" and the NEVADA HUMANE SOCIETY, a Nevada non-profit corporation, hereinafter called "Lessee" or "NHS".

### **WITNESSETH:**

WHEREAS, Lessor will construct and be the sole owner of a facility to be known as the Regional Animal Services Shelter, or by such other name as the parties hereto mutually agree, located at \_\_\_\_\_ Longley Lane, Reno, Washoe County, Nevada, the purpose of which will be to operate a consolidated regional animal services agency;

WHEREAS, the parties to this Agreement have entered into that certain Lease Payment Agreement, dated as of \_\_\_\_\_, 2003 (the "Lease Payment Agreement"), pursuant to which the parties hereto are cooperating in the development of the facility;

WHEREAS, this facility will have certain operational space available for lease to Lessee to conduct operations of the Nevada Humane Society;

WHEREAS, Lessee desires to lease from Lessor that certain space described below designated for use by the Nevada Humane Society;

WHEREAS, the Parties desire to enter into a definitive agreement (the "Professional Services Agreement") in connection with the operation of the Facility and this Agreement pursuant to which NHS will perform certain services hereinafter delineated for the benefit of the County (the "NHS Services"), and also pursuant to which the County will perform certain services in cooperation with NHS and in conjunction with the provision of the NHS Services by NHS (the "County Services"); and

WHEREAS, the parties desire by this Agreement to define their respective rights, duties and liabilities relating to the premises.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

### **SECTION ONE**

#### **DESCRIPTION OF PREMISES**

Lessor hereby demises unto Lessee that portion of the Washoe County Regional Animal Services Center facility ("the Facility") to include a minimum of 24,000 square feet of space designated for the sole use of Lessee located at \_\_\_\_\_ Longley Lane, Reno, Washoe County, Nevada, ("the Premises"), together with the non-exclusive use of common areas, entrances, hallways, exterior grounds, restrooms and parking in common with Lessor and other tenants of Lessor.

### **SECTION TWO**

#### **TERM OF LEASE**

This Lease shall be effective only in the event the Facility is constructed and then as of the date of execution hereof. The term of this Lease shall be one hundred eighty (180) months commencing on the first day of the month following Lessor's receipt of a certificate of occupancy for the Facility from the City of Reno, which Lessor shall then immediately fax to Lessee, and terminating exactly one hundred eighty months later, unless terminated upon mutual agreement of the parties or as otherwise provided herein.

### **SECTION THREE**

#### **RENEWAL**

Lessee shall have the option of two (2) additional and separate renewal terms, provided Lessee is not in default at the time of the exercise of an option. Said renewals shall commence upon expiration of this term or any extension or renewal thereof and shall each be for a period of one hundred twenty (120) months. Written notice to renew shall be given at least one hundred twenty (120) days prior to the expiration of this

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Agreement or any renewal term. The lease rate for each year of each such renewal periods shall be calculated on the same basis as described in Section Four (B) below.

#### **SECTION FOUR**

##### **RENTAL**

Effective upon the commencement date as defined in Section Two above, Lessee agrees to pay Lessor, at such place as Lessor shall designate from time to time in writing, Supplemental Lease Payments, as defined below, for the Premises described in Section One above as follows:

1. Supplemental Lease Payments due for the first five years of the Lease shall be determined at least annually by the County and shall be an amount which the County determines is sufficient, as described in Section 4C of the Lease Payment Agreement. Such Supplemental Lease Payments shall be payable monthly in arrears, as a fraction of the annual amounts Determined or Estimated by the County pursuant to Section 4C of the Lease Payment Agreement.

2. Supplemental Lease Payments due after the first five years shall be determined as provided in Section 4D of the Lease Payment Agreement.

3. All Supplemental Lease Payments shall be made payable to Washoe County, Department of Public Works, at P.O. Box 11130, Reno, NV 89520-0027. Supplemental Lease Payments or other amounts payable hereunder shall be due the first (1st) day of each month and if not received by the Lessor or properly deposited into the U.S. Mail system by the tenth (10th) day, Lessee agrees to pay a surcharge equivalent to five (5%) percent of the monthly rental. Notwithstanding the foregoing, no late charge shall be assessed with respect to the first two (2) late payments of rent in a twelve month (12) period.

## SECTION FIVE

### **COMMON AREA MAINTENANCE**

A. Lessor shall maintain the Facility and Common Areas in good condition and repair. The term "Facility and Common Areas" means all interior and exterior areas and structures within the exterior boundaries of the Facility, including that which is provided and designated by the Lessor from time to time for the general use and convenience of the Lessee and other tenants of Lessor.

B. Facility and Common Area maintenance shall include, but is not limited to, all such maintenance, repair and construction work as shall be required to preserve and maintain the utility of the Facility and Common Area; maintenance, repair, resurfacing and painting of pedestrian walkways, throughways, roadways, service corridors, parking areas and patios; maintenance and servicing of elevators, heating, ventilating and air conditioning systems; sweeping, snow removal, trash disposal and other janitorial services of the common areas; maintenance and servicing of sprinkler systems, gardening and landscaping areas; lighting and all utilities utilized in connection therewith; maintenance and repairs of exterior roofs, exterior roof coverings, exterior supporting structures, walls and overhead roll-up doors; exterior and interior window cleaning; painting; cleaning of hard surface floors and carpeted areas; telephone systems, excluding those necessary for the operation of Lessee's operations and use; other mechanical systems such as plumbing, security and electrical; and modifications required for compliance with any statutes, ordinances and/or regulations, including required changes in installations for supply of utilities or sanitary facilities or other public facilities; and other maintenance in the Lessor's judgment necessary for the operation of the Facility and Common Areas.

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## **SECTION SIX**

### **USE OF PREMISES**

A. Lessee shall use the Premises to conduct activities and operation of the Nevada Humane Society and shall not use or permit said Premises or any part thereof to be used for any other purpose.

B. Lessee shall not conduct or at any time knowingly permit its employees, agents or visitors to conduct activity on the Premises that is unlawful or in violation of any federal or state statute, code or regulation.

## **SECTION SEVEN**

### **ALTERATIONS AND IMPROVEMENTS**

A. The parties hereby acknowledge that upon commencement of the term hereof the Premises are in good condition and are architecturally acceptable to Lessee, and shall not be altered, repaired or changed except as provided herein.

B. Lessee agrees that it shall not alter the Premises or erect partitions, install or change any doors or windows, or place any nails, screws or other implements or fasteners into the wood work or walls, except such items as are necessary to suitably decorate or make the Premises attractive for the purposes intended, without the prior written consent of Lessor. Upon Lessor's request, Lessee shall prepare plans and specifications of such work and submit the same to Lessor for its approval prior to making such alterations or improvements. Said approval will not be unreasonably withheld.

C. The parties agree that all the erections, additions, fixtures and improvements, except only movable equipment, office furniture, shelving and any decorative items which can be removed without substantially affecting the integrity of the Facility, made in or upon said Premises shall remain upon the Premises at the termination of said term by lapse of time or otherwise, without compensation to Lessee.

D. The erection, construction, installation or making of any improvements shall be accomplished in a workmanlike manner and in compliance with all applicable federal, state, county and municipal laws and regulations. Lessee shall keep the Premises free from any liens arising out of any and all work that it may perform, or materials furnished, or obligations incurred by Lessee. Lessee shall have thirty (30) days from the date of notice of said lien, as provided by Lessor, within which to remove said encumbrance without breaching the provisions of this Agreement.

### SECTION EIGHT

#### **LESSOR IMPROVEMENTS**

A. Lessor reserves the right from time to time and at its own expense to make such improvements, alterations, renovations, changes, and repairs in and about the Facility in which the Premises are located including the demised Premises, as Lessor shall deem necessary or desirable provided Lessor prior to entering the demised Premises gives Lessee as much prior notice as is reasonably practicable, but no less than forty-eight (48) hours notice of its intent to do so, and, except where such improvements, alterations, changes and repairs unreasonably and/or materially disrupt Lessee's use and peaceful enjoyment of the Premises, Lessee shall make no claim against Lessor for abatement of rent for interference with Lessee's leasehold interest or for loss or damage to its business during such improvements, alterations, changes and repairs.

B. Lessor shall make all improvements in a safe, workmanlike manner so as not to prove hazardous to tenants and/or the public.

### SECTION NINE

#### **MAINTENANCE, REPAIRS AND INSPECTIONS**

A. Lessor shall be responsible for performing periodic maintenance to the interior of the demised Premises in a reasonable and timely manner. Lessor, however, shall not be responsible for making repairs or replacements caused by the negligence or willful destruction by Lessee, Lessee's contractors, agents or employees.

B. Lessor shall provide exterior and interior window cleaning and shall keep the Premises at all times in a neat, clean and sanitary condition.

C. Lessor shall maintain parking areas including snow removal, the roof, sidewalks, windows, exterior walls and overhead roll-up doors of said Facility.

D. Lessor shall provide reasonable maintenance, repair and replacement of all plumbing including plumbing fixtures, elevators and central mechanical equipment, water heaters, heating, ventilating and air conditioning equipment necessary to provide service to the Facility and maintain the Premises in a reasonable and safe manner and in full compliance with all mandated federal, state and local regulatory requirements.

E. Lessee shall permit Lessor or its authorized agent to enter into and upon the demised Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs or maintaining the Facility in which the Premises are located; provided, however, that in the event Lessor intends to make repairs or perform maintenance that would materially disrupt Lessee's use and enjoyment of the Premises, Lessor shall give advance notice thereof to Lessee as soon as practicable, but, absent exigent circumstances, in no event less than fifteen (15) days in advance of such repairs or maintenance.

F. Lessee, as appropriate, shall keep the Premises free from any liens arising out of any and all work that it may perform, or materials furnished, or obligations incurred by Lessee. Lessee shall have thirty (30) days from the date of notice of said lien, as provided by Lessor, within which to remove said encumbrance without breaching the provisions of this Agreement.

## SECTION TEN

### **UTILITIES, CUSTODIAL, TELEPHONE**

A. All gas, electricity, water, sewer, and other public utilities for the normal intended use set forth in this Agreement, specifically used upon and which shall be separately metered to the demised Premises shall be paid at the sole cost and expense of Lessor but included in the operating expenses and reserve accounts of the Facility.

B. Lessor shall provide regular interior trash removal and janitorial services to administrative areas and office environments of the Premises as well as cleaning and sanitizing of public restrooms, excluding holidays and other periods of closure recognized and observed by both Lessor and Lessee.

C. Lessee shall provide routine cleaning and sanitizing of all kennels, cages, pens, enclosures and animal holding areas including animal use facilities such as exercise/acquaintance areas, infirmary and rehabilitation areas on no less than a daily basis in areas specifically designated for use by Lessee.

D. Lessor shall provide routine cleaning and sanitizing of all kennels, cages, pens, enclosures and animal holding areas including animal use facilities such as exercise/acquaintance areas, infirmary and rehabilitation areas on no less than a daily basis in areas specifically designated for use by Lessor.

E. Lessee is responsible for and shall provide all of its telephone service needs of any and all kinds at its sole cost and expense, including installation and monthly service charges for equipment, fees, line and toll charges or any changes thereto specifically requested by Lessee.

F. Lessor shall pay any and all real property taxes and/or sewer assessment fees applicable to the real property upon which the Facility is located.

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## **SECTION ELEVEN**

### **SIGNS, MONUMENTS, ARTIFACTS OR OTHER SYMBOLIC RECOGNITION**

Lessee agrees that no signs, advertisements, monuments, artifacts or other symbolic recognition shall be painted or affixed to any part of the outside of the Facility in which the Premises are situated without the approval of Lessor, which consent shall not be unreasonably withheld.

## **SECTION TWELVE**

### **WAIVER**

Any failure on the part of either party to take action against the other for any breach or covenant herein shall not be construed to constitute a waiver of any other or subsequent breach.

## **SECTION THIRTEEN**

### **DESTRUCTION OF PREMISES**

In the event of a partial destruction of said Premises or the Facility of which the Premises is a part during the said term, from any cause, Lessor shall forthwith repair the same within one hundred-twenty (120) days, provided such repair can be made within said period under the laws and regulations of the state, federal, county or municipal authorities. If required repairs are commenced promptly, this Agreement shall not be modified, except that Lessee shall be entitled to a proportionate reduction of rent if a portion of the demised Premises are rendered unusable or substantially impaired while repairs are being made. If such repairs cannot be made in one hundred twenty (120) days, this Lease Agreement may be terminated at the option of either party. Either party shall notify the other of such party's election to terminate the lease within twenty-one (21) days following the date Lessee receives written notice from Lessor of its inability to repair the Facility within the one hundred twenty (120) day period due to such damage or destruction. A total destruction of the Facility in which the Premises is situated shall terminate this Agreement. This provision is not intended to affect the rights of either

party to seek recovery against the person responsible for the damages, subject, however, to the provision of Section Fourteen below.

#### **SECTION FOURTEEN**

##### **CONDEMNATION**

In the event that any part of the Premises hereby demised shall be condemned or taken by any municipal, county, federal, state or other authority for any purpose, then the term of this Agreement shall cease on the part so taken from the day the possession of that part is required for any public purpose. The rent shall be paid up to that day and thereafter the Lessee or the Lessor shall have the right to either cancel this Lease or to continue in the possession of the remainder of the same under the terms herein provided, except that the rent shall be reduced in proportion to the area of that portion of the Premises taken for such public purpose. All damages awarded as compensation for diminution in value to the leasehold or to the fee of the Premises shall belong to and be the property of Lessor. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damages to Lessee's business by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's furniture, fixtures, equipment and leasehold improvements.

#### **SECTION FIFTEEN**

##### **INDEMNIFICATION**

A. Pursuant to Nevada Revised Statutes, Chapter 41, and without waiving any provisions thereof, the parties hereto agree that each will be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost or judgment made against that party arising from any negligent act or negligent failure to act by any of that party's employees, agents or servants in connection with work or responsibilities performed pursuant to this Agreement.

B. Pursuant to Nevada Revised Statutes, Chapter 41, and without waiving any provisions thereof, the parties hereto agree to hold harmless, indemnify and defend each other from and against any and all losses, liabilities or expenses of any nature to the person or property of another to which each may be subjected as a result of any claim, demand, action or cause of action arising out of the negligent acts, errors or omissions on the part of the employees, agents or servants of another.

## SECTION SIXTEEN

### INSURANCE

A. Each party hereto shall provide for their financial responsibilities regarding their respective liabilities hereunder through the purchase of insurance or the provision of a self-funded program pursuant to Nevada law.

B. Lessor will obtain and maintain property and fire insurance on the Facility on an all risk, replacement cost basis for coverage of the Facility and at such amounts as Lessor may deem prudent. Lessor shall develop a charge for losses within its deductibles under the property insurance charge in the Facility's operating expenses.

C. Lessor hereby expressly waives and releases any cause of action or right of recovery which Lessor may have hereafter against the Lessee for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk covered by insurance.

D. Lessee shall obtain and maintain fire insurance on all contents owned by the Lessee located at the Premises.

E. Lessee hereby expressly waives and releases any cause of action or right of recovery which Lessee may have hereafter against the Lessor for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk covered by Lessee's insurance or self insured program.

F. In the event Lessee's occupancy causes any increase of premium for Lessor's insurance on the Premises, or any parts thereof, above the rate applicable for facilities and operations similar to those contemplated pursuant to this Agreement, Lessee shall have fifteen (15) days after receipt of written notification from Lessor of such increase to correct or mitigate said circumstances which resulted in the need for a premium increase. If Lessee is unable to mitigate or correct said circumstances, Lessee shall pay the increased premium.

#### SECTION SEVENTEEN

##### **HAZARDOUS SUBSTANCES**

A. Lessee shall not cause or permit any hazardous substances to be used, released, stored, manufactured or disposed in or upon the Premises or the Facility, except in the minimum quantities as are customary and usual in connection with Lessee's permitted use. If the Premises or the Facility become contaminated as a result of a violation by Lessee of this Section or for which Lessee is otherwise legally liable, Lessee shall indemnify, defend and hold Lessor harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments, together with Lessor's attorney's fees.

B. If hazardous substances have been used, released, stored, manufactured or disposed in or upon the Premises, or if the Premises are or become contaminated in any manner, for which Lessor is legally liable, Lessor shall indemnify, defend and hold Lessee harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments, together with Lessee's attorney fees.

C. "Hazardous Substances" mean all toxic, ignitable, reactive and corrosive substances regulated by federal, state or local governments.

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## **SECTION EIGHTEEN**

### **ATTORNMENMENT AND NON-DISTURBANCE**

A. Lessee shall in the event of the sale or assignment of Lessor's interest in the real property or Facility of which the Premises are a part, or in the event of any proceeding brought for the foreclosure of the Premises, attorn to the purchaser or assignee and recognize such purchaser or assignee as Lessor under this Agreement.

B. Any purchaser, assignee, or other party acquiring Lessor's interest in the real property or Facility of which the Premises are a part, agrees to recognize the validity and enforceability of this Agreement and that notwithstanding any default by Lessor with respect to any security document, Lessee's possession, quiet enjoyment and all of Lessee's rights under this Agreement in and to the Premises shall not be disturbed by such purchaser, assignee or other party unless Lessee is in default under the terms of this Lease.

## **SECTION NINETEEN**

### **QUIET ENJOYMENT**

Lessee, while in compliance with the terms and covenants herein, is entitled to the quiet enjoyment of the demised Premises for the term hereby created.

## **SECTION TWENTY**

### **ASSIGNMENT AND SUBLEASE**

This Agreement may not be assigned or the Premises sublet without the prior written consent of Lessor.

## **SECTION TWENTY-ONE**

### **NOTICES**

Notices hereunder shall be effective on the date of delivery if delivered to a party hereto at the address listed in this Section, or to any new address located in Washoe County, Nevada, provided by that party by notice delivered pursuant to this Section, and shall be effective three (3) days after the date of mailing thereof if mailed by first class,

postage prepaid mail, certified return receipt requested. Unless otherwise provided, notice provided to each party shall be as follows:

If to the County:

(for physical delivery)

(for US Mail)

Washoe County, Nevada  
Attn: Director of Public Works  
1001 E. 9<sup>th</sup> Street  
Reno, NV 89512  
P.O. Box 11130  
Reno, NV 89520  
775-328-2040  
775-328-3699 (fax)

With a copy to:

Washoe County, Nevada  
District Attorney's Office-Civil Division  
50 W. Liberty (Short Tower), Third Floor  
Reno, Nevada 89501  
Attn: Assistant District Attorney, Civil  
775-337-5700  
775-337-5732 (fax)

If to NHS to:

Nevada Humane Society  
PO Box KIND  
200 Kresge Lane  
Sparks, NV 89432  
Attn: Executive Director  
775-331-5770  
775-331-8569 (fax)

With a copy to:

Michael G. Alonso, Esq.  
Jones Vargas  
100 W. Liberty Street, 12<sup>th</sup> floor  
Reno, NV 89501  
775-788-2228  
775-786-1177 (fax)

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## **SECTION TWENTY-TWO**

### **ATTORNEY'S FEES**

Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover such amounts as may be adjudged to be reasonable attorney's fees for the services rendered to the prevailing party in such action or proceeding, together with costs incurred.

## **SECTION TWENTY-THREE**

### **TERMINATION**

A. Upon termination of this Agreement, Lessee shall quit the Premises peaceably, with no damage to the Premises, normal wear and tear and damage outside the control of Lessee excepted, and shall remove all of Lessee's personal property from the Premises.

B. The failure by Lessee to make any payment or the failure of either party hereto to observe or perform any covenants, conditions or provisions of this Agreement required to be made, observed or performed by such party, after thirty (30) days written notice of such default shall constitute a default of this Agreement by such party; provided, however, that if the nature of the default (other than the payment of money) is such that more than thirty (30) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if such party commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Upon default, the non-defaulting party may pursue all remedies available under Nevada law, including termination of the Lease and recovery of all damages caused by such default.

#### **SECTION TWENTY-FOUR**

##### **CHOICE OF LAW; VENUE**

This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada. The parties consent to the personal jurisdiction of any state or federal court of competent jurisdiction located in Washoe County, Nevada and to the service of process by any means authorized by any such state or federal court under the laws of the State of Nevada. The exclusive venue of any action, proceeding or counterclaim arising out of or in connection with this Agreement shall be Washoe County, Nevada.

#### **SECTION TWENTY-FIVE**

[intentionally left blank]

#### **SECTION TWENTY-SIX**

##### **EFFECT OF AGREEMENT**

A. Except as otherwise specifically provided herein, this Agreement constitutes the entire contract between the parties with respect to the subject matter hereof, and no obligation other than those set forth herein will be recognized unless endorsed hereto in writing.

B. Each of the covenants, warranties, and agreements herein contained are binding on the parties hereto, their successors, assigns and legal representatives. In the event of any breach of these covenants, warranties and agreements by a party during the duration of this Agreement, whether or not discovered by or known to the other party during the lease term, such other party expressly reserves unto itself the right to pursue appropriate legal action against the party at fault to correct or cure said breaches or deficiencies.

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## SECTION TWENTY-SEVEN

### **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

A. The prospective Lessee, Nevada Humane Society, certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency:

2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

5. understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

## SECTION TWENTY-EIGHT

### SERVICES

The Professional Services Agreement to be entered into between the Parties shall provide at a minimum for the performance of the NHS Services, the performance of the County Services, and the corresponding obligations of the Parties related thereto, as follows:

A. NHS Services. NHS shall perform the following services: (i) accept, care for and board eligible surrendered and non-redeemed animals; (ii) animal adoptions; (iii) veterinary services for animals under NHS's control, including emergency treatment, assessment, vaccinations, spaying and neutering; (iv) euthanasia and disposal of remains; (v) wildlife rehabilitation; (vi) educational programs; (vii) cruelty investigations; (viii) provide temporary shelter for impounded animals in cruelty and neglect cases; and (ix) animal rescue. In addition, at NHS's sole discretion, it may provide any other animal welfare services at the Facility as are consistent with NHS's mission to promote animal welfare and provide for the relief and prevention of all animal suffering and the purposes of this Lease Payment Agreement.

B. County Services. The County shall perform the following services: (i) temporarily shelter impounded animals; (ii) provide for owner redemption of eligible impounded animals (iii) care for stray, abandoned or abused animals, animals running-at-large or other animals subject to impounding; (iv) veterinary services for animals under the County's control; (v) euthanasia and disposal of remains; (vi) administer animal licensing programs; (vii) verify animal inoculations and manage rabies vaccination records. In addition, at the County's sole discretion, it may provide any other animal welfare services as are consistent with governmental responsibilities for animal welfare and the public interest and the purposes of this Lease Payment Agreement.

C. Compensation. The Parties intend that NHS shall receive reasonable compensation for certain of the NHS Services detailed in clause A above as mutually agreed, which compensation shall be negotiated by the Parties in the development of and entry into the Professional Services Agreement. Such compensation shall be based on the

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costs to NHS of providing such services, including the other costs associated with the mutual agreements of the parties hereto, and the corresponding costs avoided by the County due to NHS assuming responsibility for the provision of certain of the NHS Services. In addition, the Parties agree that NHS shall be permitted to charge and retain reasonable fees for adoption services. Further, if the County requests NHS to perform services additional to the NHS Services delineated above, and NHS agrees to provide such services, the compensation to NHS for the provision of such additional services shall be determined and agreed upon by the Parties prior to NHS accepting the responsibility for the provision of such additional services, all as more fully determined by the terms and provisions of the Professional Services Agreement. Nothing herein, however, obligates the County to spend money in excess of the amount appropriated in its annual budgets, as provided in NRS 354.626.

D. Standard of Care. The Parties each shall exercise the degree of care, skill and diligence in the performance of the NHS Services and the County Services, respectively, as is ordinarily provided by, (i) in the case of NHS, a professional animal services organization under similar circumstances, and (ii) in the case of the County, by local governmental agencies charged with animal welfare responsibilities. Such standards of care shall be reflected in written protocols to be developed by the Directors in connection with the development of and entry into the Professional Services Agreement.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of  
the date and year first above written.

**LESSOR:** WASHOE COUNTY, a political  
subdivision of the State of Nevada

By: \_\_\_\_\_  
David E. Humke, Chairman  
Board of County Commissioners

ATTEST:

\_\_\_\_\_  
Washoe County Clerk

**LESSEE:** NEVADA HUMANE SOCIETY,  
a Nevada non-profit corporation

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

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STATE OF \_\_\_\_\_ )  
:ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003 before me a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, personally appeared, \_\_\_\_\_ known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he/she executed the same freely and voluntarily on behalf of Lessee, for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
:ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003 before me a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, personally appeared David E. Humke, Chairman, Board of County Commissioners, known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he executed the same freely and voluntarily on behalf of Lessee, for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public

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STATE OF \_\_\_\_\_ )  
:ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003 before me a  
Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_,  
personally appeared Amy Harvey, Washoe County Clerk, known to me to be the person  
described herein and who executed the foregoing instrument and who acknowledged to  
me that she executed the same freely and voluntarily on behalf of Lessor, for the uses and  
purposes therein mentioned.

\_\_\_\_\_  
Notary Public

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**EXHIBIT "B"**  
**(Description of Collateral)**

As authorized by the attached NHS corporate resolution, incorporated by reference herein and made a part hereof, a pledge of up to \$1.8 million in market value of assets contained in that certain investment account maintained by Wells Fargo Bank, as trustee for the Dorothy Benson Endowment Fund, such pledge to be adjusted reasonably periodically to reflect payments made by NHS pursuant to the Lease Payment Agreement.

As authorized by the attached NHS corporate resolution, incorporated by reference herein and made a part hereof, a pledge of up to \$1.0 million in market value of assets contained in that certain investment account maintained by Citicorp Trust Bank, as trustee for the Nevada Humane Society Endowment, such pledge to be adjusted reasonably periodically to reflect payments made by NHS pursuant to the Lease Payment Agreement.

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