

Lincoln County Animal Shelter Services Agreement and Lease

(Draft –Agreement - August 24, 2011-

This Agreement is subject to change)

An Agreement by and between

Lincoln County, Oregon

And

Friends of the Lincoln County Animal Shelter, Inc.

Entered into this [REDACTED] day of [REDACTED], [REDACTED]

SECTION 1 – DEFINITIONS

As used in this Agreement and Lease:

(1) “Agreement” means this Animal Shelter Services Agreement including the lease of the Lincoln County Animal Shelter facility and property defined herein, located at 510 NE Harney Street, Newport, Oregon.

(2) “Animal Services” means the combined activities within the Lincoln County Sheriff’s Office, including Animal Services and Protection (formerly denominated Animal Control) and Animal Shelter Services that together serve law enforcement and community animal shelter needs in Lincoln County.

(3) “Lincoln County Animal Shelter” (“Shelter”) means the facility and surrounding property located at 510 NE Harney Street, Newport, Oregon as depicted in Exhibit “A” attached hereto and incorporated herein.

(4) “County” means Lincoln County, a political subdivision of the State of Oregon, acting by and through its Board of Commissioners, Elected Officials and offices and departments.

(5) “Fair” means the Lincoln County Fair, acting by and through its Fair Board.

(6) “Fair Board” means Lincoln County Fair governing body.

(7) “Fairgrounds” means the property held by Lincoln County for the fairgrounds, generally described as the area in County ownership between NE 7th and NE 3rd Streets (North to South) and the County Public Works/Animal Shelter/Impound facilities and the Newport High School (East to West) in the City of Newport.

(8) “FOLCAS” means the Friends of the Lincoln County Animal Shelter, Inc. a 501(c)(3) private nonprofit corporation, with EIN 27-0177878.

(9) “Parties” (unless clearly set forth otherwise) means Lincoln County, by and through its Board of Commissioners, and FOLCAS.

(10) “Sheriff” and “Sheriff’s Office” (SO) means the Lincoln County Sheriff and his Office.

SECTION 2 – BACKGROUND

Lincoln County, through the Lincoln County Sheriff’s Office, has operated the Lincoln County Animal Shelter since 1987. Prior to that time, the Animal Shelter was operated under a contract between the County and the Central Coast Humane Society starting in October of 1977.

The current Animal Shelter facility was constructed around 1967 and has undergone remodeling and expansion on several occasions since that time.

Animal Services Unit in the Sheriff's Office includes the Animal Services and Protection and Animal Shelter Divisions. The Animal Services and Protection Division enforces the laws of the state and county including, but not limited to, the dog control services identified in ORS Chapter 609. The Animal Shelter, for its part, has included operation of a dog impoundment facility in accordance with ORS Chapter 609 to provide an "adequate and sanitary" facility to meet the law enforcement needs of the County. In addition, the Animal Shelter accepts and cares for, on a space available basis, dogs, cats, and other animals surrendered by the public, and together with other partners and volunteers in the community, Animal Services provides adoption services, licensing of dogs in accordance with law, assistance in rabies vaccination services with local veterinarians, and promotes the humane treatment of animals. The current service demands exceed the capacity of the Shelter.

Animal Services has been funded since 1987 by a combination of resources: County general fund dollars (the largest single source); a contract with the Cities of Lincoln City and Newport for Animal Control services within their municipal boundaries; fees and fines generated by local enforcement of dog ordinances; and licensing fees collected and placed in a separate fund maintained by the County in accordance with ORS Chapter 609.

In fiscal year 2009-2010, Lincoln County experienced a significant reduction in available general fund resources with the downturn in the local, state and national economy and was forced to propose extensive cuts in services and personnel throughout the County system. One such cut that was considered that year by the Sheriff was in Animal Services, including the possible closure of the Animal Shelter in June of 2009, except for limited impoundment and euthanization services.

Concerned citizens stepped forward to look at ways to keep the Animal Shelter open. A nonprofit organization called the Friends of the Lincoln County Animal Shelter, Inc. or FOLCAS, an IRS qualified 501(c)(3) nonprofit corporation, was formed from this group. FOLCAS worked with the Board of Commissioners to come up with a plan to keep the Animal Shelter open for fiscal year 2009-10 while long-range funding solutions were examined. The plan was to keep the Animal Shelter open and fully operational.

Subsequent to that time, FOLCAS, the Central Coast Humane Society, and other interested parties presented a petition to the Board of Commissioners requesting that a property tax levy be placed before the voters of the County to continue Animal Services (including animal control and the shelter) for the foreseeable future. The Board agreed, and a ballot measure providing for a five-year local option tax (the maximum time period allowed under law) was prepared and referred to the voters on November 3, 2009. See Lincoln County Board of Commissioners Resolution #09-02-09D, September 2, 2009, recorded in the Commissioners Journal at [REDACTED]. The measure, Measure 21-134, asked voters to approve a levy of \$0.11 per \$1,000 of assessed value for the years starting fiscal year 2010-2011 and continuing through fiscal year 2014-2015. The results of the election were overwhelming: some 71% of the voters supported the measure. See Lincoln County Board of Commissioners Resolution # [REDACTED], certifying election results, recorded in the Commissioners' Journal at [REDACTED].

With funding in place, Animal Services continue and are expanded (there are now three animal service and protection officer positions authorized under the levy) for current fiscal year 2010-11 under the capable leadership of the Sheriff's Office.

The Board of Commissioners and other interested parties continue to look at ways to effectively, efficiently and affordably partner to provide Animal Services beyond the end of fiscal year 2014-15. That includes not only the development of long range, stable funding for those current services and others desired by the County, FOLCAS and the community, but also strategic partnering in operation of the services within the capabilities of the organizations involved in these efforts. One such proposal is the transfer of operational responsibility of the Animal Shelter management and operations to FOLCAS. This agreement is an outgrowth of those discussions.

[Paragraph reserved for description of vetting process for Agreement with other groups, cities, community and public at large and description of specific findings from that vetting process supporting this action]

Transfer of operation of the Shelter to FOLCAS is accomplished by a partnership between the County and FOLCAS with each Party clearly understanding its roles and responsibilities. The Parties, however, recognize that not all questions or issues can be anticipated and addressed in this agreement. Therefore, the formation of advisory committees, communications conduits, and dispute resolution provisions is included and made part of the commitment of the parties to see that this partnership has the means and mechanisms to succeed.

All the parties recognize and agree that the integration and continuation of Animal Services, traditional animal control, licensing, impoundment and sheltering, adoption, vaccination and education, together with other services not currently available, will require a continuing public-private funding partnership. The County believes that there will be, in all likelihood, a need to place another levy measure before the voters to renew the current levy when it expires. In the County's opinion, the amount of the levy dedicated to shelter operations is expected to decrease as private funding and reduced operational costs for the Shelter are planned to reduce, but not eliminate, the need for public dollars, especially in light of needed capital improvements.

SECTION 3 - MUTUAL AGREEMENT

Lincoln County and FOLCAS understand that long-term viability of Animal Services in the County is dependent on a public-private partnership that provides for stable funding and consistent, effective and affordable long-term management of facilities, personnel and operations. The Parties agree that they, as well as many other partners in the community including but not limited to cities, the Central Coast Humane Society, local veterinarians, law enforcement, and, most importantly, the public at large, will need to cooperate in long-term efforts to achieve those ends. The Parties commit through this agreement to provide cooperation, assistance and support for their mutual efforts. Toward those ends, the Parties also adopt the following statement to define in general terms the mission of the Animal Shelter:

The Lincoln County Animal Shelter encompasses a facility and services that seek to meet the needs of the community at large and local governments, in particular, to provide safe, humane shelter for impounded, homeless, abused, neglected, lost

or abandoned animals; primarily dogs and cats. It provides a temporary home for these animals that are offered for adoption, held for a short time until their owners can be found, and shelters animals impounded for actions by the county, cities or courts.

The Lincoln County Animal Shelter constitutes facilities and the supporting operations that establish, maintain, and enhance services that first and foremost promote benefits to the animals under its care and support law enforcement services for abused, neglected and impounded animals. These efforts involve a public-private partnership that recognizes the involvement of many groups and individuals in the community.

The Lincoln County Animal Shelter operates in a professional manner, incorporating sound principles of kennel science, disease control, sanitation, and other humane animal care techniques. It works closely with the County and public agencies including, but not limited to, the Animal Services and Protection Division of the Sheriff's Office, County Counsel, the County Health and Human Services Department, State and local law enforcement and City officials.

In keeping with the partnership principles in this agreement, the Parties mutually agree to the following:

(1) FOLCAS will form and maintain an Advisory Board and a Shelter Management Committee. The Advisory Board will include at least one representative of the Board of Commissioners and one representative of the Lincoln County Sheriff's Office and will meet regularly, no less than three (3) times per year, to review operations at the Animal Shelter, with a focus on achievement of the mission described above, the relationship of Shelter operations to partner expectations and needs, prioritization of new services and activities, and development of strategies to address any issues raised by the Parties not resolved through other channels. This Board will not take the place of direct communications between the Sheriff's Office and other County officials and Shelter Management, for any operational issues that may arise. Meetings of this Board will be open to the public, regularly noticed and advertised, and minutes and reports will be posted on both FOLCAS and County websites. The Shelter Management Committee will include FOLCAS Board representation, local vets, shelter manager and others as determined by FOLCAS. It will focus on day-to-day and tactical operations at the Shelter.

(2) Lincoln County will form an Animal Services Review Committee, to include a representative from FOLCAS and representatives from other County partners, to review audits and other financial information related to the Animal Shelter and to recommend funding alternatives for continuation of Animal Services prior to the expiration of the local option tax levy. Required timing of those recommendations by the Committee will be set by the Board of Commissioners.

(3) FOLCAS will provide an annual report to the Board of Commissioners starting August 15, 2012, for FY 2011, and, yearly thereafter by August 15th for the preceding fiscal year while this agreement is in effect. The report will provide a description of Shelter activities and usage, recommendations for facilities improvements and maintenance, and plans for the coming

year's services. Included in the report will be annual performance goals and achievements from the prior year. The report will be posted on both FOLCAS and County websites, once it is finalized and accepted by the County.

SECTION 4 – ANIMAL SHELTER LEASE

Lincoln County will retain ownership of the Lincoln County Animal Shelter building and grounds, and will lease the facilities and access easement to FOLCAS under terms of the Lease attached to and incorporated herein as Exhibit "A". Notwithstanding any other provision of the Lease, it is understood and agreed by the Parties that the term of the lease shall be coexistent with the term of this Agreement. If for any reason, the County or FOLCAS terminates this Agreement, the Lease shall also terminate without further action of the parties, provided however, that FOLCAS, as lessee, will be given adequate time, unless otherwise mutually agreed by the parties, to remove equipment or fixtures allowed to be removed under terms of the Lease.

SECTION 5 – ANIMAL SHELTER SERVICES

FOLCAS shall:

(1) Operate the Animal Shelter in conformance with the mission mutually agreed to by the Parties as set forth in Section 3 above. FOLCAS will develop standards of care for its operations at the Animal Shelter and prepare benchmarks to measure its performance. Guidelines and performance measures from the Association of Shelter Veterinarians, an international group dedicated to improving the health and well-being of animals in shelters, will be used to assist in this process. Written standards and benchmarks will be provided to County and the public within 120 days of the transfer of operations.

(2) Keep the Animal Shelter open fully to the general public on a regular, advertised schedule for no less than 140 hours per month, unless otherwise mutually agreed in writing by the Parties, and excepting closures reflective of the holidays determined by FOLCAS (and published in the preceding Annual Report) or other occasional closures for other good and sufficient reasons determined by FOLCAS. In such cases, notice will be provided to the Lincoln County Sheriff's Office 24 hours in advance, if possible. In no case will closure to the public compromise care and feeding of the animals. Adequate FOLCAS personnel shall be maintained and available for the hours of operation referenced above and to:

(a) Answer calls from the public (either directly or through answering services or devices);

(b) Board dogs, cats, and, to the extent that facilities are available and suitable, other animals, provided, however, that priority shall be given to accepting dogs and cats for impoundment, boarding and other disposition as appropriate, that are delivered by the Lincoln County Sheriff's Office and other local law enforcement agencies recognizing the law enforcement responsibilities of the public partners. Given that priority, the Parties also recognize the limited capacity of the Animal Shelter and will work together to determine alternatives if space is not available;

(c) Board dogs, cats, and, to the extent that facilities are available and suitable, other animals brought in by the public, as long as the needs of Lincoln County are met as outlined in paragraph (2)(b) above. FOLCAS agrees to hold all dogs it accepts, whether brought in by law enforcement, animal control or otherwise, for the requisite period of time in ORS 609.090 (2);

(d) Process, with community partners' assistance, adoption of animals that are boarded and available and suitable for adoption in accordance with the requirements of ORS Chapter 609. Except for animals impounded by the Cities or County, the determination of "available and suitable" shall be at the sole discretion of FOLCAS;

(e) Sell licenses to prospective owners of dogs released from the Animal Shelter as an agent of the County in all cases required under law and in accordance with the requirements of law (including proof of required vaccinations), or require the presentation of a valid license by owners seeking release of found animals;

(f) Sell licenses as an agent of the County to all other persons who seek licensing of their dogs as required under law and in accordance with the requirements of law (including proof of required vaccinations);

(g) Collect impoundment and boarding fines, fees and charges as an agent on behalf of County for those animals impounded by County or law enforcement. These fines, fees and charges shall be set by the County, provided to FOLCAS and remitted to the County on a monthly basis;

(h) Provide 24-hour access to the Shelter for the Animal Services and Protection Division of the Lincoln County Sheriff's Office and other law enforcement agencies, as designated by the County.

(i) Charge and keep reasonable fees for the provision of services to the general public as long as a schedule of those charges and fees is provided to the County (in the Annual Report, with intermediate updates determined by FOLCAS, with notice to the County, as necessary);

(j) Provide all nonbuilding/structure equipment, materials, and personnel at FOLCAS' expense necessary to operate the Animal Shelter under the terms of this Agreement, provided that the equipment identified in Exhibit "B" shall be provided to FOLCAS for its use during the term of this Agreement;

(k) Keep and maintain complete and accurate records of all fees charged and collected (separating those charged and remitted as agent for the County from those charged and collected otherwise), and keep an accounting of all revenues and expenditures made in relation to services rendered under this Agreement. These records shall be provided on a regular (quarterly) basis to the County and to the County Review Committee established under Section 4 above;

(l) Expand existing services and provide new services as determined by FOLCAS, with input from its partners and the community, and consistent with the mission (identified in Section 3) and available resources. These expanded and new services are both expected and welcome under this Agreement.

(3) Keep and maintain an Activity Log that shall record the date, time, and nature of the receipt of every animal at the Animal Shelter, including the name and address (if known) of the person presenting the dog, or the name and position of the law enforcement officer impounding the animal, the date, time and notification of the owner if the animal has an

identification tag or current license, the amount of any fees, fines, and other charges for the animal, the name and address of any adopter of the animal, and the final disposition of the animal.

(4) Maintain records, documents and other accounting evidence that sufficiently and properly substantiates all direct and indirect costs expended in operation of the Animal Shelter. Provide a quarterly accounting of these records and a summary of the Activity Log to the County and the County Review Committee established under Section 4 above.

(5) All records required under this Agreement shall be subject to inspection and review by the County upon its request. The records shall be retained by FOLCAS no less than five (5) years after the termination of this Agreement.

(6) Animals that cannot be returned to their owners or that cannot be adopted or otherwise be cared for, or that in the opinion of FOLCAS' authorized staff are in such a condition of injury, disease, or other condition as is appropriate, may be humanely euthanized. FOLCAS shall adopt a written policy to guide this decision-making process which shall be included in its Annual Report.

(7) Perform criminal background checks for volunteers, staff and board members. The information from this process may be used to not hire, not use, modify employment, terminate the relationship, or terminate employment.

(8) Collect license fees and related fees from shelter customers and affected animal owners on behalf of the County. The license fees and other revenue will be reported and turned over to the County on a regular basis (to be determined). The licensing process, including the database, can be used by FOLCAS for other efforts.

(9) At its discretion, may also use the licensing (and renewal) process and database to market, gain volunteers, educate the public, and solicit contributions for benefit of the shelter.

(10) Pay for worker's compensation, general liability, driver's/vehicle insurance, volunteer coverage, Board and Committee coverage, and building contents in amounts acceptable to the County and at a minimum in amounts required under the Oregon Tort Claims Act.

(11) Provide the County with copies of organizational documents (and updates, as appropriate), including but not limited to: bylaws, articles of incorporation, 501(c)3 status, personnel policies and employee manual, nondiscrimination policy, and conflict of interest policy.

(12) At its discretions, use volunteer labor for the operations at the shelter. It will establish rules and policies for such use including, but not limited to, background, age, physical capability, skills, and availability.

(13) Not assign the management of the shelter to another party without County approval, but will have the sole right to enter into agreements with other entities in order to support and assist in the management, operations, and promotion of the shelter, and may do so without the specific or individual approval of the County. FOLCAS will disclose these agreements to the County as they are executed or as part of regular reporting documents.

(14) Establish, pay for, and control its personnel, IT, phone, financial, and legal costs and services for the Shelter. FOLCAS will provide copies of its annual audit, IRS Form 990, and any other financial reviews to County upon receipt of the materials. The audit and Form 990 will be published on FOLCAS' website.

(15) After the effective date of this agreement, FOLCAS personnel rules and guidelines will apply to all employees and volunteers. All employees will serve “at will.”

County shall:

(1) Provide timely access to FOLCAS of funding levels in the Animal Services Fund, including tax levy monies, fines, fees, donations, and associated interest.

(2) Allow FOLCAS to use the shelter property and images to sell and market items, at its discretion, related to the FOLCAS mission of providing funding for the shelter.

(3) All current shelter staff will transfer to FOLCAS employment. County will fulfill its obligations in the transfer, including appropriate notice to employees (see Exhibit “C”).

(4) Animal control positions and responsibility will remain with County.

(5) Animal control officers will be able to place animals at shelter and elsewhere, including possibility of large animals, and many animals in a short period of time.

(6) Provide FOLCAS with health department and animal rescue records it possesses on a quarterly basis.

(7) Give FOLCAS the exclusive rights to use, promote and manage the name "Lincoln County Animal Shelter."

(8) Legally pursue delinquent licensees by at minimum sending an official letter to the animal owners at FOLCAS’ direction. Additional actions will be at the discretion of the County based on available resources and personnel.

(9) Make all operational and financial records related to the Animal Shelter and, to the extent possible personnel records of transferred employees, available to FOLCAS.

SECTION 6 – TRANSFER OF EMPLOYEES

FOLCAS shall accept all shelter employees currently employed in good standing by the County upon transfer of shelter operations by the County under the terms and conditions of ORS 236.605 to 236.640 as fully set out in Exhibit “C”.

FOLCAS agrees that future staff compensation levels provided by FOLCAS at the Shelter will be based, in part, on bonuses tied to performance.

[County certifies that it has bargained to completion the contracting of these services to FOLCAS in accordance with the terms of the collective bargaining agreement between the County and the Lincoln County Deputy Sheriff’s Association and as required under Oregon’s Public Employees Collective Bargaining Act (PECBA) ORS Chapter 243.] **Process near completion; this note to be included in final agreement.**

SECTION 7 – PAYMENTS/FUNDING

It is the Parties’ intention that the County will provide funding for the services identified in this Agreement (Section 5) and that FOLCAS will also develop and provide funding for the Shelter. It is also expected that FOLCAS will be able to control costs of Shelter services in a manner that will allow the funding stream available to the County to be available over a longer

period of time. As previously noted, however, the Parties recognize that it is likely the County will need to seek renewal of the voter-approved local operating tax to provide continued funding for Shelter services in the future.

FOLCAS will submit an annual budget to County by February 1st of each year identifying all expected revenues and expenses for the following fiscal year (defined as July 1 to June 30) for operation of the Animal Shelter. The first year's budget (which includes less than a full fiscal year) is attached hereto and incorporated herein as Exhibit "█". Included in the budget will be the annual request for transfer of County funds from the Animal Services Fund, which includes pro rata funds set aside from the local operating tax levy, dog licensing revenues and other fees and charges collected for and remitted to the County. After review and agreement on the amount by the parties, an appropriation shall be included in the County budget to pay FOLCAS the agreed upon amounts for services identified in this Agreement. For the initial payment, County will advance one-half of the funds prior to the date of transfer. The remaining funds for the fiscal year will be paid in equal installments for the remaining quarters for that initial fiscal year. For subsequent fiscal years, once the County budget is adopted, County shall pay FOLCAS quarterly in advance, with the first payment made on or as soon as practicable after July 1 of each year. A calendar of transfer dates will be developed for each year as soon after the County Budget is adopted as possible, but not later than July 1. Transfers will be made electronically.

The first year's budget will include a baseline amount, one-year adjustment amount, and enhanced services amount. (See Exhibit "█"). In subsequent years, it will include a baseline amount, and enhanced services amount.

During any fiscal year, if FOLCAS believes an adjustment in the amounts provided under this agreement is needed to reflect an increase in actual expenses, it will make a request to County that will be reviewed and acted upon by the Board of Commissioners. All decisions must be made in accordance with Oregon Local Budget Law.

The Parties agree that it is the intent of this Agreement that funds from fines, fees, licenses, carryover balances and the tax levy shall be spent prior to those of other sources. This is done to allow for FOLCAS to gain investment income from its funds, especially during the first four years of the agreement.

County has established an Animal Services Fund separate from the other funds of the County. The County has determined that 65% of the local operating tax levy amounts will be set aside for operations at the Animal Shelter. Any pro rata amounts collected but not paid to FOLCAS in any year will be held by the County in reserve (it may be appropriated, but not expended) for use in subsequent years for Animal Shelter operations. Any investment income earned for these funds shall be credited to the Animal Services Fund in proportion to the amounts held in reserve for the Shelter.

Dog license fund revenues, impoundment fees, and fines collected by the Shelter and remitted to the County will be held 85% for Shelter operations and 15% for animal control. Any amounts collected and not paid in any year will be held in reserve and earn investment income pro rata in the same fashion as the levy amounts.

If donations are made directly to the County for Shelter operations, those shall be held in either a separate trust account or held for and credited to the Shelter within the Animal Services Fund. At the time of entrance into this agreement, County shall determine what, if any, funds it has received are for shelter operations and what are for other Animal Services.

The County will maintain an accounting of the funds and investment income for the Animal Services Fund that identifies those amounts held for Animal Shelter operations and those held for Animal Control operations. FOLCAS will maintain an accounting of all Shelter finances and any other monies that it controls. All such records (of the County and FOLCAS) shall be available to the public and subject to reporting and auditing.

FOLCAS will commission a yearly independent audit and provide results to the County as long as it is receiving public funds.

SECTION 8 - MISCELLANEOUS PROVISIONS

(1) FOLCAS staff shall participate as requested by County Counsel or the Sheriff in legal proceedings involving impounded or sheltered animals. Such proceedings shall include, but not be limited to, hearings, proceedings or other actions (such as impoundment or quarantine) under ORS Chapter 609 and/or Lincoln County Code Chapter 2.

(2) It is understood and agreed by the Parties that FOLCAS Shelter staff shall provide other assistance as requested by the County for special dog, cat or other animals situations within the resources and facilities available through the Shelter.

(3) The Parties intend to rely on the services and commitments of FOLCAS as a material inducement for entering into this agreement. The rights and duties under this Agreement may not be assigned to another party, except for those noted in Section 5, Subsection 13.

(4) The Parties intend that any issues related to operations at the Shelter or issues relating to interactions between the employees or agents of the parties, or any issues concerning rights and responsibilities under this Agreement, be resolved at the lowest possible level. Toward that end, the parties agree to attempt in good faith to mutually resolve disputes at a staff level in the first instance. If unresolved, the dispute will be moved to the next level of supervisor in the case of the County, and the Shelter Manager in the case of FOLCAS. If the matter cannot be resolved at that level, the issue will be addressed by the County Elected Official or Department Director whose responsibility encompasses the issue. If still unresolved, the County Board or its designee and the FOLCAS Board or its designee shall become involved to mutually resolve the dispute. If, at this level, the Parties are still unable to reach resolution, then the Parties may mutually agree to submit the issue in controversy to mediation through the Lincoln County Mediation Program using the services of a mutually agreed upon mediator. Any costs for mediation shall be borne equally by the Parties. If the Parties are unable to reach resolution through mediation, the Parties shall then be free to exercise their respective rights under the agreement through whatever means are available under law. That may include, but is not limited to, enforcement or termination of the Agreement.

(5) All notices to the Parties concerning this Agreement shall be sent to:

Lincoln County Board of Commissioners
225 W. Olive Street, Room 110
Newport, Oregon 97365

FOLCAS Board
PO Box 2264
Newport, Oregon 97365

Any notice required or given under this Agreement shall be provided in writing by placing it in the U.S. Postal Service, first class postage prepaid, to the addresses and to the attention of the Parties specified above, or as modified at any time by either Party by written notice hereunder.

(6) Indemnification. FOLCAS shall hold harmless, indemnify and defend County, and its officers, agents and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature resulting from, arising out of, or related to the activities of FOLCAS or its officers, employees, subcontractors, volunteers or agents under this Agreement. County will hold harmless, indemnify, and defend FOLCAS against all claims, suits, actions, losses, damages, and expenses of any nature resulting from, arising out of, or related to the activities of County, its officers, employees, or agents under this Agreement.

(7) Insurance.

(a) Liability. FOLCAS agrees to purchase and maintain throughout the duration of this Agreement Comprehensive General Liability, Automobile Liability, and Directors and Officers Liability, and Volunteers Liability Insurance at its own expense covering its activities under this Agreement. This insurance shall be provided in the amounts equal to or greater than that required under ORS Chapter 30 for a public entity. (Note: those amounts change annually). In addition, all such insurance shall list Lincoln County and its elected officials, officers, employees, agents and representatives as an Additional Insured for the indemnification obligations under this Agreement. A copy of the policy or certificate of insurance acceptable to the County shall be submitted to the County prior to actually providing any services pursuant to this Agreement. FOLCAS further agrees to maintain such insurance throughout the term of this Agreement and to provide County thirty (30) days advance written notice of cancellation or any material change thereof.

(b) Worker's Compensation. FOLCAS agrees to comply with ORS 5.017 for all its employees and volunteers. FOLCAS shall provide County certification of such worker's compensation insurance. FOLCAS further agrees to maintain such insurance through the term of this Agreement and to provide County thirty (30) days advance written notice of cancellation or any material change thereof.

(8) If FOLCAS wishes to declare a financial or other emergency and surrender facility to the County, it will give a 30-day notice, if possible. This obligation is in addition to the termination rights and responsibilities in Section 12 below.

SECTION 9 - EFFECTIVE DATE

This agreement will have a beginning date, including the transfer of the shelter management, use of facility, first funding installment, and employees, on [REDACTED].

SECTION 10 – SEVERABILITY

The determination that any provision of this Agreement is in conflict with any federal, state or local constitution, charter, law, ordinance, regulation or order shall not nullify any other provision of this Agreement. The conflicting provision shall continue in effect to the extent that it remains valid.

SECTION 11 - CHOICE OF LAW

The provisions of this Agreement shall be governed by Oregon law.

SECTION 12 – TERMINATION

(1) Mutual Consent. The parties may terminate this Agreement at any time by mutual written consent.

(2) Mutual Termination Authority. Either party may terminate this Agreement without cause with one hundred eighty (180) days written notice to the other Party.

(3) County Termination with Cause. County may terminate this Agreement with written notice to FOLCAS of non-performance of duties or obligations, financial non-performance, breach or default under this Agreement or other good and sufficient cause as determined by County. Notice of termination for cause may be immediate if in County's determination continuation of services is jeopardized. Otherwise, County will provide written notice of the specific cause or breach and afford FOLCAS thirty (30) days to remedy the issue. The remedy period may be extended by County. During this period County will work with FOLCAS to identify acceptable remedies.

(4) FOLCAS Termination for Cause. FOLCAS may terminate this Agreement with written notice to County of non-performance of duties or obligations, failure to make funding available in amounts and upon schedules as agreed by the parties, or other breach or default under this Agreement. FOLCAS will provide written notice of the specific cause, breach, or default and afford County thirty (30) days to remedy this issue. The remedy period may be extended by FOLCAS. During this period FOLCAS will work with County to identify acceptable remedies.

(5) If the Agreement is terminated, any unspent or unobligated funds derived from the tax levy and County fees will be immediately returned to the County by FOLCAS. Improvements to the Animal Shelter facility shall be treated in accordance with the terms of the Lease arrangement between the parties. Equipment purchased by FOLCAS will be divided in accordance with terms relating to the purchase of the equipment.

(6) If FOLCAS no longer provides management and operational oversight for the Shelter, the funds that FOLCAS has collected (and associated investment income) from whatever sources will continue to be pledged for animal care in Lincoln County. FOLCAS shall use such funding, and any future income, for specific grants, projects, and programs to be developed at that time.

(7) It is understood that continuation of the Agreement between the Parties is subject to available county funding in annual appropriations during the budget process, and the likely continuation of funding through continuation of local option funding source. This local option is subject to voter approval. If for any reason continued County funding becomes an issue, the Parties agree to engage in further discussions of options for continuation of services as needed by the County and as capable of being provided by FOLCAS. This may include, but is not limited to, lease of the current Animal Shelter facility.

(8) The obligations and rights noted herein under the Termination Section shall not limit the remedies available under law to either Party in the event of termination of this Agreement.

IT IS SO AGREED

DATED this _____ day of _____, _____.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Terry N. Thompson, Chair

Bill Hall, Commissioner

Don Lindly, Commissioner

FRIENDS OF THE LINCOLN COUNTY ANIMAL SHELTER, INC.

, Board President

Exhibit A

DRAFT

LEASE AGREEMENT

THIS LEASE is made in Lincoln County, Oregon, this ____ day of _____, 2011, by and between **Lincoln County**, hereinafter referred to as Lessor, and the **Friends of the Lincoln County Animal Shelter** a 501C(3) private non-profit corporation, hereinafter referred to as Lessee.

WITNESSETH:

In consideration of the mutual covenants contained herein, Lessor leases to Lessee the following-described property on the terms and conditions stated below:

[Legal description of footprint of Animal Shelter Property plus non exclusive use of parking - -Parties to determine location of limited spaces to be designated for Shelter, including ADA parking] Note: **use of parking is subject to priority use of parking property by events held or authorized by Lincoln County Fair Board or Lincoln County. Access to Shelter during some events (such as annual fair) may be curtailed. Lessor will insure that Lessee's staff has access for care of animals at all times; but it is understood and agreed that public access may be limited on occasion by Fair Board or County.**

1. **Animal Services Agreement.** The terms and conditions of this Lease are adjunct and subservient to the terms of the Lincoln County Animal Shelter Services Agreement (Animal Shelter Services Agreement) dated _____ by and between the Lessor and Lessee, which by this reference is incorporated herein as if fully set forth. Any conflict between the terms of that Agreement and this Lease shall be resolved by reference to the Agreement first.

2. **Original Term.** The term of this Lease shall commence _____, 2011, and shall continue through June 30, _____ unless sooner terminated or renewed as hereinafter provided.

3. **Possession.** Lessee's right to possession and obligations under this Lease shall commence immediately upon the first day of the term.

4. **Renewal Option.** If the Lease is not then in default and the Animal Shelter Services Agreement remains in full force, Lessee shall have the option to renew this Lease for two (2) additional one-year terms, the next terms being July 1, 20__-June 30, 20__, and July 1, 20__- June 30, 20__. The option may be exercised by written notice to

Lessor given not later than May 31st of the expiring term. The giving of such notice shall be sufficient to make the Lease binding for the renewal term without action of the parties. Except as noted below, the terms of the Lease shall be the same for the term of renewal.

5. **Tax Exemption.** Lessor is a property tax exempt entity under ORS 307.090 et seq. Lessee is eligible for exemption from property taxation under ORS 307.130 and 307.166. This Lease establishes obligations which do not exceed the costs set forth in ORS 307.166(1). Lessee shall use the property only for purposes required by law, if any, to qualify for that exemption. Lessee shall prepare the application for exemption for processing by the Lincoln County Assessor's Office. If the exemption is not granted, or if the law is changed so that the exemption is no longer available, Lessor shall be entitled to recoup from Lessee an amount equal to the taxes due and owing for the year in which the exemption is not granted by a prorate increase in rent over the remaining months of the Lease term. Lessor shall be responsible for payment of said taxes.

A. AGREEMENTS OF LESSEE

1. Rent for the original term and succeeding terms shall be \$1 and other consideration as provided for in the Animal Shelter Services Agreement.

2. Lessee may propose at its cost improvements to the Animal Shelter, including but not limited to, alternative energy and water harvesting. Lessor agrees to consider these improvements, but does not make any commitment of County funds or personnel to accomplish the same, and must prioritize any commitment of County resources and personnel with other County facility priorities as determined by the Board of Commissioners. If projects move forward, specific details will be negotiated between the Parties at the appropriate time. These projects are intended to reduce on-going utility costs. Lessee shall keep the leased premises free of mechanics and other liens. All improvements shall become part of the leased premises and remain so after the termination of this Lease unless otherwise agreed in writing by the Parties.

3. Lessee agrees to pay all utilities and services at the subject property, including but not limited to phone, internet, cable, sewer, water, electricity, and garbage collection.

4. Lessee agrees to observe and comply with all laws, regulations, and rules now in effect or which may be enacted during this Lease by any municipal, county, state, or federal authority having jurisdiction over the premises, and to indemnify Lessor for any damage caused by any violation thereof.

5. Lessee agrees to keep the premises in as good repair as they are at the beginning of the Lease term, with wear and tear arising from the reasonable use of the premises and damages by the elements being excepted. The premises shall be used for the Animal Shelter and associated and affiliated activities. Premises shall not be used for

any other purpose without the consent of Lessor, which consent shall not be withheld unreasonably.

6. In connection with the use of the premises, Lessee shall:

a. Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct, at Lessee's own expense, any failure of compliance created through Lessee's fault or by reason of Lessee's use, but Lessee shall not be required to make any structural changes to effect such compliance (unless such changes are required because of Lessee's specific use).

b. Refrain from loading the floors beyond the point considered safe by a competent engineer or architect selected by Lessor.

c. Refrain from storing on or discharging from or onto the property any hazardous waste or toxic substances as defined in 42 USC §9601 through §9657.

d. Refrain from any use which would be reasonably offensive to other tenants or users of neighboring premises or which would tend to create a nuisance or damage the reputation of the premises.

e. Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Lessor, which consent shall not be unreasonably withheld.

7. Lessee agrees to:

a. Maintain Comprehensive General Liability, Director's and Officers' liability, and Automobile insurances as required in the Animal Shelter Services Agreement;

b. In addition, Lessee shall provide, as it deems needed, personal property insurance for the premises and its contents through its general property insurance. Lessee agrees to hold harmless, indemnify and defend Lessor for the activities of Lessee's employees, invitees, and members of the public utilizing services in facilities under this Lease.

8. Lessee may not assign this Lease or sublet the premises or any portion thereof without prior written notice to and consent from Lessor.

9. Lessee agrees to permit Lessor and their agents to enter upon the premises, or any part thereof, at all reasonable hours, for the purpose of examining or exhibiting the premises or making such repairs or alterations as may be necessary for the safety or preservation thereof.

10. Lessee agrees, at the expiration or termination of this Lease, to give peaceful possession of the premises to Lessor in as good condition as the premises are now in, with the usual wear and tear and loss by fire and the elements excepted.

11. If Lessee shall be in default or breach of any of the provisions herein, or shall have abandoned or vacated the premises, Lessor shall have whatever remedies are provided by law or in equity, including termination of this Lease, reletting of the premises, and action for damages.

12. Failure of Lessor to insist on the strict performance of the terms, agreements, and conditions contained herein shall not constitute a waiver of Lessor's right thereafter to enforce such provisions.

13. Lessor shall have the remedies provided by law and in equity for any default or breach of Lessee's agreements herein, including the following:

a. In the event of a default, the Lease may be terminated at the option of Lessor by notice in writing to Lessee. If the Lease is not terminated by election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default. If the Lease is terminated, Lessee's ability to Lessor for damages shall survive such termination, and Lessor may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

b. Following reentry or abandonment, Lessor may relet the premises and in that connection may make any suitable alterations or refurbish the premises, or both, or change the character or use of the premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the premises, or to any tenant which Lessor may reasonably consider objectionable. Lessor may relet all or part of the premises, alone or in conjunction with other properties for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

c. In the event of termination on default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the Lease term, the following amounts as damages the reasonable costs of reentry and reletting including, without limitation, the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, or any other expense occasioned by Lessee's failure to quit the premises upon termination and to leave them in the required condition, any remodeling costs, attorney fees, court costs, broker commissions, and advertising costs.

d. Lessor may sue periodically to recover damages during the period corresponding to the remainder of the Lease term, and no action for damages shall bar a later action for damages subsequently accruing.

e. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

B. AGREEMENTS OF LESSOR

1. All fixtures, including signs, erected or attached to the leased premises by Lessee may be removed by Lessee at the termination of this Lease, provided:

a. Lessee shall not then be in default in the performance of any of the agreements herein;

b. That such removal shall not cause any injury to the building, and the surfaces thereof shall be restored to the same condition as the surrounding areas, as if no fixtures had ever been in place; and

c. That removal shall be made before the expiration of this Lease or any extension thereof.

2. Lessee shall be responsible for all routine maintenance of the property and grounds. Lessee shall submit a work order to Lessor's facilities manager who shall arrange or provide for any major repairs or maintenance to (including but not limited to) the heating or cooling, plumbing, or electrical systems, or the exterior walls, windows, roof, gutter, downspouts, foundation, sidewalks, stairs and yard or other exterior structures. Major repairs and maintenance are defined as expenditures which are estimated to exceed \$250 in cost. It is understood that the determination of appropriate levels of maintenance and the priorities and scheduling of any maintenance work to be done shall be determined at Lessor's (Lincoln County's) discretion given the priorities, funding and scheduling of maintenance for all County Facilities. Due consideration will be given where Lessee has funds to accomplish the proposed work. The parties may consider outside contractors, if the work is reviewed and approved by the Lessor and done in accordance with public contracting and public works requirements.

3. Lessee shall have the remedies provided by law and in equity for any default or breach of Lessor's agreements herein, including termination, rent abatement, and action for damages.

C. MUTUAL AGREEMENTS OF LESSOR AND LESSEE

1. Lessor and Lessee agree that the following events shall be defined as defaults:

a. Failure of Lessee to pay charges within twenty days after due date. All charges from Lessor to Lessee shall be due within 30 days of billing unless otherwise agreed.

b. Failure of Lessee or Lessor to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges)

within twenty (20) days after written notice specifying the nature of the default with reasonable peculiarity. If the default is of such a nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if the party alleged to be in default begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

c. Failure of Lessee for ten (10) days or more to occupy the property for one or more of the purposes permitted under the Lease, unless such failure is excused under other provisions of this Lease, shall be an abandonment of the property.

2. This Lease will be terminated without default if the Animal Services Agreement is terminated.

3. Lessor and Lessee agree to assume liability for, and hold the other party harmless from, all damages, costs and fees in defense thereof caused by the negligence or willful act of Lessor or Lessee's respective invitees and guests in or upon any part of the premises, and to be responsible for any damage, breakage, or theft of the other party's equipment, fixtures, or inventory within the premises not caused by the other party's negligent or intentional actions.

4. If, during the term of this Lease, the premises shall be destroyed by fire or the elements, this Lease shall cease and become null and void from the date of such damage or destruction, and Lessee shall immediately surrender the premises to Lessor and shall pay rent or other charges only to such surrender time. If the premises are capable of being repaired within a reasonable time, Lessor shall have the option to repair the premises.

5. If the whole of the premises, or such portion thereof as will make the premises unusable for the purposes herein leased, shall be condemned by any legally constituted authority then, in either event, the term of this Lease shall cease from the time possession is taken by such public authority, and rental obligations shall be adjusted to such date. The termination shall be without prejudice to the respective rights of the parties to recover compensation from the condemning authority. If less than the aforesaid amount of the premises shall be condemned, then this Lease shall not terminate but rent shall be reduced proportionately after possession is taken by the condemning authority.

6. If either party is required to take legal notice to enforce any of the agreements in this Lease, then the prevailing party in such action or on appeal shall be entitled to reasonable attorney's fees awarded by the court.

7. Notices and demands by either Lessor or Lessee may be given at:

LESSEE: Friends of the Lincoln County Animal Shelter, Inc.

PO Box 2264
Newport, OR 97365

LESSOR: Lincoln County
County Courthouse
225 West Olive Street, Room 110
Newport, OR 97365

subject to the right of either party to designate by notice in writing a new address to which the notices or demands must be sent.

8. All of the agreements, terms and conditions of this Lease shall extend to and be binding on the successors in interest to the parties herein. The terms of this Lease shall be construed under the laws of the State of Oregon.

9. Wherever the words "Lessor" and "Lessee" are used herein, they shall be read as "Lessors" and "Lessees" in all cases where there is more than one and with the necessary grammatical changes as if duly made herein.

IN WITNESS WHEREOF, the parties hereto have signed this Lease the day and year first above written.

LESSEE: LINCOLN COUNTY BOARD OF COMMISSIONERS

LESSOR: FRIENDS OF THE LINCOLN COUNTY ANIMAL SHELTER, INC.

Chair

Chair, Board of Directors

Commissioner

Commissioner

APPROVED AS TO FORM ONLY:

Wayne Belmont, County Counsel

Exhibit B

To Be Developed by the Parties

Draft
Exhibit "C"

ORS 236.605 to ORS 236.640

ORS 236.605 to 236.640 governs the transfer of employees from the County to FOLCAS. The County has also complied with collective bargaining agreement between the County and the Lincoln County Deputies Association covering most of the current employees at the Shelter. Pursuant to those requirements the parties agree that:

1. FOLCAS will accept transfer of all current employees from the County Animal Shelter to its operations.
2. These transferred employees will not have their salaries reduced as a result of this transfer for the first 12 months of employment with FOLCAS.
3. After that, the employees will be placed at the closest salary for the position as designated on FOLCAS' salary schedule.
4. County will liquidate and pay off accrued time consistent with law and its obligations under the collective bargaining agreement provided, however, that any transferred employee may elect to:
 - a. Retain accrued sick leave and
 - b. Retain up to 80 hours vacation leave
5. County will pay FOLCAS cost of accrued leave transferred under the elections identified in paragraph 4.
6. After transfer, FOLCAS shall determine method of granting leave requests according to its rules
7. FOLCAS will provide health care coverage under a policy selected by FOLCAS. If there are any waiting periods before coverage begins, County will work with FOLCAS and the impacted employee to pay for COBRA coverage to insure no break in coverage.
8. County will provide all employment records to FOLCAS. Date of transfer will be set under this agreement.
9. Shelter employees are currently under the County 401(k) retirement plan but are not fully vested in that plan. County agrees to pay to FOLCAS an amount for each employee equal to the amount held in the County retirement plan for that employee at the time of transfer. FOLCAS will in turn pay to each employee's new retirement account (or alternatively an IRA for the employee) this amount in a manner that vests the payment immediately. Thereafter retirement contributions shall be set by FOLCAS. This plan is subject to review and approval of the County's retirement plan attorney.