

**AGREEMENT BETWEEN
THE COUNTY OF MUSKEGON
AND
VOLUNTEERS OF MUSKEGON COUNTY ANIMAL CONTROL
(A/K/A POUND BUDDIES)**

This Agreement is made by and between the **County of Muskegon**, a municipal corporation and political subdivision of the State of Michigan, having its principal place of business at 990 Terrace Street, Muskegon, Michigan 49442, (hereinafter referred to as the “County”), and **Volunteers of Muskegon County Animal Control**, a Michigan non-profit corporation and 501(c)(3), having its principal place of business at 3840 Eastbrook Drive, Muskegon, Michigan 49444, (hereinafter referred to as “Contractor” or “Pound Buddies”).

I. AUTHORITY

The County of Muskegon has the authority and/or obligation to oversee and/or enforce: MCL 287.266 – 287.277; Michigan Public Act 339 of 1919 (Dog Law); and the Muskegon County Animal Control Ordinance.

II. PURPOSE

The purpose of this Agreement is to contract for services for the board and care of dogs impounded by law enforcement agencies to enable the County to meet its statutory obligation in an efficient and professional manner.

III. SCOPE OF SERVICES

Pound Buddies is contracted to provide office hours, dog food, water, shelter, other humane treatment, animal shelter licensing, rabies vaccinations (if needed), reporting, and all other associated costs through qualified personnel in a manner which conforms to all applicable federal, state and local laws, rules and regulations and all applicable standards of pertinent agencies and applicable professional associations.

IV. RESPONSIBILITIES OF POUND BUDDIES

During the term of this Agreement, Pound Buddies is responsible for the following:

- A. Pound Buddies shall assure that cage space is available to house stray or homeless dogs that were not licensed and/or were running at large in violation of the Dog Law of 1919 which were brought to the shelter location by law enforcement agencies.
- B. Pound Buddies will maintain suitable office hours for the convenience of the public and for the purpose of transacting business in connection with the duties listed in this

contract and for the purpose of receiving dogs from law enforcement agencies or redemptions of impounded animals.

- C. Pound Buddies must provide food, water, shelter or other humane treatment and care for such dogs while in their possession during the reclaim period specified in MCL 287.388 (*4 or 7 day hold period depending upon identification found on dog*). After the reclaim period, Pound Buddies is to take final custody of the animal and make the determination whether to adopt, transfer or humanely euthanize the dog.
- D. Pound Buddies must acquire and maintain an animal shelter license and comply with all sections of Act 287 or 1969 (Pet Shops, Dog Pounds and Animal Shelters). Pound Buddies must also comply with any other applicable State statutes or local ordinances (if applicable) pertaining to the care and adoption of dogs.
- E. Pound Buddies will assure that all dogs adopted or released have a current rabies vaccination.
- F. Pound Buddies will provide adopting parties the option of purchasing dog licenses at Pound Buddies, if the adopting party resides in Muskegon County. The County Treasurer's Office will provide proper training to Pound Buddies' employees on how to sell dog licenses. When Pound Buddies sells a dog license, Pound Buddies will submit to the County Treasurer's Office the license information and fees collected. This submission will be made on a monthly basis, due on the 10th of the following month.
- G. In addition to the reporting requirements in Subparagraph F of this section, Pound Buddies will also submit monthly reports to the County Administrator. These monthly reports will detail the information on the disposition of all dogs dropped off at Pound Buddies. This information shall include the disposition of the dog, and if adopted, the adopting parties contact information, as well as whether a license was purchased. This submission will be made on a monthly basis, due on the 15th of the following month. This reporting requirement shall begin January 2016.
- H. Pound Buddies will provide cage space and access to the shelter as needed for the quarantine of animals that need to be observed by Public Health staff for rabies for a minimum of ten days.
- I. Pound Buddies will provide veterinary services, space and refrigeration (if needed) for biological samples that need to be sent to the lab; and access to the shelter for Public Health staff responsible for sending the samples to the lab.
- J. Pound Buddies will provide housing and care for animals that are evidence in cases involving animal neglect or cruelty laws per the Muskegon County Sheriff's Department.

- K. Pound Buddies will be solely responsible for the cost of utilities (electricity, gas, water) and the labor and material associated with general maintenance (i.e. janitorial) of the Shelter not to exceed \$500.00/per occurrence during the contract period. Pound Buddies will maintain the building in good working condition.
- L. Pound Buddies will charge all appropriate fees (impound, quarantine and surrender) and will require appropriate licensing of dogs prior to release.
- M. Pound Buddies will not use any County funds toward the board and care of cats.
- N. Pound Buddies will continue to perform temperament testing to evaluate the dogs' behavior before adoption. Pound Buddies will not release a dog for adoption if the dog does not pass the temperament test or has any tendency toward aggressiveness.
- O. Pound Buddies will seek additional funding through grants and other means.

V. RESPONSIBILITIES OF THE COUNTY

- A. County shall maintain insurance coverage on the building structure covering damage or destruction of the building itself.
- B. County shall be responsible for major repairs to the building or building systems. Major repairs shall be defined as any repair necessary for proper performance of the building or building system as intended which cost exceeds \$500.00 so long as the repair is not necessary due to abuse, vandalism or other reasons other than normal wear. County shall be responsible for lawn maintenance and snow removal.
- C. County shall not be responsible to maintain anything modified by Pound Buddies without prior County approval.
- D. County shall perform periodic walkthrough tours of the building to observe the condition and use of the building.

VI. INSURANCE REQUIREMENTS

Pound Buddies as a part of this Agreement shall be required to maintain insurance coverage as specified below:

- A. Workers' Compensation Coverage for its employees with statutory limits and Employer's Liability coverage with limits of:
 - Coverage A – Compensation as required by State
 - Coverage B – Employer's Liability to \$500,000.00

- B. Commercial General Liability – Coverage not less than provided on the standard ISO 1993 Form, which includes contractual liability, personal injury, board form property damage, extended liability, and where applicable, products liability coverage, with coverage limits of:
Per occurrence - \$1,000,000

- C. Comprehensive Automobile Liability – Coverage not less than provided on the standard ISO 1990 Form, which includes contractual liability coverage and coverage for all owned, hired, and non-owned vehicles with limits of:
Bodily Injury and Property Damage, Any One Accident or Loss - \$1,000,000

- D. Umbrella or Excess Liability
Per occurrence - \$1,000,000

Pound Buddies shall name the County of Muskegon as an additional insured and shall provide proof of the coverage listed above at or before the execution of this Agreement.

VII. TAXES

County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by State, Federal, or local taxing agencies, Contractor agrees to reimburse County promptly for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, without limitation the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance and worker's compensation insurance.

VIII. HOLD HARMLESS

To the fullest extent permitted by law, Pound Buddies shall defend, indemnify, and hold harmless the County, its subsidiaries, departments, division, and agencies and their respective officials, officers, directors, employees, and agents from and against any and all liability, litigation, causes of action, and claims, by whomsoever brought or alleged, and regardless of the legal theories upon which based, and from and against all losses, costs, expenses, and fees and expenses of attorneys and expert witnesses resulting there from on account of, relating to, or arising out of bodily injury or death of any person or on account of damage to property, including loss of use thereof, arising or allegedly arising out of or resulting from this Agreement.

The foregoing indemnity of the County shall include, but is not limited to, claims alleging or involving the negligence of Contractor, its sub-contractors, or the joint negligence of Contractor and its sub-contractors, except to the extent that such liability may be found by way of final judgment to have resulted in whole or in part from the negligence, recklessness and/or willful misconduct of the County.

IX. RELATIONSHIP OF THE PARTIES

It is strictly understood that the relationship created by this document between the County and Pound Buddies is that of an independent contractor and nothing in this document creates an employer/employee relationship.

X. DAMAGES TO PROPERTY

Responsibility for damage or theft of County or Pound Buddies' property directly caused by Pound Buddies, its employees or volunteers during the course of shelter service operations shall be assumed by Pound Buddies. A written report of same and cause of damage, if known, must be submitted to County Facilities Management within twenty-four (72) hours following the discovery of the occurrence.

XI. COMPENSATION / PAYMENT SCHEDULE

Contractor agrees to charge the County and the County agrees to pay Contractor as follows:

- A. Year 1: \$140,000 per year
- Year 2: \$190,000 per year
- Year 3: \$235,000 per year

Billing shall be made by monthly invoice and will not exceed 1/12 of the annual cost. Services rendered will not be considered complete until the required monthly reports are submitted.

- B. This Compensation / Payment Schedule applies only to the Scope of Services and Responsibilities outlined in Sections III and IV of this Agreement. All modifications or amendments of the services to be performed hereunder shall be made only by the written mutual consent of the parties hereto, and may require additional compensation.

- C. Itemized invoices must be received within thirty (30) days of the service provided. Payment will be made by the County within thirty (30) days of receipt of invoice and upon receipt of required reports to the County Treasurer and County Sheriff departments. *(per Mark, reports to go to Treasurer and Administration only)*

XII. OWNERSHIP OF DOCUMENTS

County shall be the owner of the following items incidental to the Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Pound Buddies shall not release any materials under this section except after prior written approval of County.

XIII. ASSIGNMENT

Pound Buddies shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of County and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

XIV. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

XV. TERM

This Agreement shall continue for three years from the date of its execution.

XVI. TERMINATION

A. By County

County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's financial hardship or because of the failure of Contractor to fulfill the obligations herein, upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to County all data estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process.

1. For Financial Hardship. County may terminate the Agreement upon ninety (90) days written notice. Following notice of such termination, Contractor shall promptly cease work and notify County as to the status of its performance.

Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

2. For Cause. Should Contractor default in the performance of this Agreement or materially breach any of its provision, County may, at County's sole option, terminate this agreement with thirty (30) days written notice, which shall be effective upon receipt by Contractor.

B. By Contractor (Pound Buddies)

Should County fail to pay Contractor all or any part of the payment set forth in this agreement, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.

1. For Cause. Should County default in the performance of this Agreement or materially breach any of its provision, Contractor may, at Contractor's sole option, terminate this agreement with thirty (30) days written notice, which shall be effective upon receipt by County.

XVII. NO WAIVER OF DEFAULT

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time-to-time and as often as may be deemed expedient in the sole discretion of County.

XVIII. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreements, course of conduct waiver or estoppel.

XIX. COMPLIANCE WITH LAW

Contractor shall, at its sole cost and expense, comply with all local, state, and federal ordinances and statues now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County be a party thereto or not, that Contractor has violated any such ordinance or statute shall be conclusive of that fact as between Contractor and County.

XX. TERMS AND CONDITIONS

The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

XXI. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

XXII. MISCELLANEOUS

- A. All notices, required or permitted under this Agreement shall be in writing and shall be deemed to have been properly given if and when hand delivered or duly sent by registered mail:

To Contractor: Lynn Jazdyk, Chair
Pound Buddies
3840 Eastbrook Drive
Muskegon, MI 49444

To County: Muskegon County Administrator
990 Terrace Street
Muskegon, MI 49442

- B. None of the parties under this Agreement shall assign any of its rights or delegate any of its duties under this Agreement unless it has obtained the prior written consent of the other parties.
- C. All parties to the Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, person, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any State and/or Federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms of conditions of any contract or agreement to which Contractor is obligated, which breach would have a material effect there on.
- D. This Agreement is not intended to confer benefits or rights upon any person or entity not a party to the Agreement, and the terms and conditions hereof shall not be interpreted or construed to give rise to any right or benefit of any third party.

- E. This Agreement constitutes the entire Agreement of the parties. All prior agreements between the parties, either written or oral, are merged herein and shall be of no force and effect.
- F. This Agreement is binding upon the parties hereto, their respective successors, and permitted assigns.
- G. The Contractor assures that in accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title IX of the Education Amendment of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), the Regulations issued there under by the U.S. Department of Health and Human Services (45 CFR Parts 80, 84, 86, and 91), the Michigan Handicapper's Civil Rights Act (1976, P.A. 220), and the Michigan Civil Rights Act (1976, P.A. 453), no individual shall, on the ground of race, creed, age, color, national origin or ancestry, religion, sex, marital status, or handicap be excluded from participation, be denied the benefit of, or be otherwise subjected to discrimination or harassment under any program or activity provided by this Contractor.
- H. Pound Buddies shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice.

IN WITNESS WHEREOF, the parties have executed this Agreement.

COUNTY OF MUSKEGON

Dated: 12-17, 2015 By: Mark Eisenbarth
 Mark Eisenbarth, County Administrator

VOLUNTEERS OF MUSKEGON COUNTY ANIMAL CONTROL
 A/K/A POUND BUDDIES

Date: 12-18 - 2015 By: Lynn Jazdzzyk
 Lynn Jazdzzyk, Chair
 Employer Identification #: 38-3590598