

BILL NO. 2020-024

ORDINANCE NO. 8327

A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI, APPROVING A LEASE AGREEMENT WITH THE NEVADA ANIMAL SHELTER CORPORATION, AND AUTHORIZING AND DIRECTING THE EXECUTION THEREOF.

Be it Ordained by the City Council of the City of Nevada, Missouri, that:

Section 1. The lease agreement between the City of Nevada, Missouri, and the Nevada Animal Shelter Corporation, Inc., a Missouri Nonprofit Corporation, attached hereto and incorporated herein by reference is hereby authorized and approved as an obligation of this municipality.

Section 2. The Mayor is authorized and directed to execute the same and the acting city clerk is authorized and directed to attest the same and to affix the municipal seal.

Section 3. This ordinance supplants the prior ordinance approving a lease on an alternate site in North Nevada, Ordinance 8306 which is hereby rescinded and rendered of no force and effect.

PASSED, APPROVED AND ADOPTED, by the City Council of Nevada, Missouri, this 3rd day of March, 2020.

SEAL
ATTEST:

George Knox, Mayor

Johnna Williams, Acting City Clerk

LEASE AGREEMENT

Animal Shelter

THIS AGREEMENT, to be finally authorized and made and entered into effective on the date of final execution, by and between the Nevada Animal Shelter Corporation, a Missouri Nonprofit Corporation duly organized and existing under the laws of the State of Missouri, hereafter referred to as Lessor, and the City of Nevada, Missouri, a Missouri Home rule Charter Municipality dorganized under Article VI, Section 19, of the Constitution of Missouri, hereafter referred to as Lessee,

WITNESSETH:

WHEREAS, Lessee is desirous of acquiring possession of a modern, clean and wholesome Animal Shelter Facility, which can be used as the Animal Shelter in Nevada, Missouri, and

WHEREAS, Lessor is the owner of certain real property located in Nevada, Vernon County, Missouri; and

WHEREAS, Lessor is willing and able to construct a modern, clean and wholesome Animal Shelter Building, on said realty and lease the same to Lessee; and

WHEREAS, specifications for the construction of said Animal Shelter Building have been or will be prepared by a duly licensed architect or engineering firm; and

WHEREAS, such specifications are acceptable to both Lessor and Lessee.

WHEREAS, Lessor is seeking a loan made or insured by the United States of America acting through the United States Department of Agriculture, hereinafter referred to as "USDA Rural Development", to enable Lessor to construct said facility;

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the parties as follows:

1. Lease of Premises: Lessor hereby agrees to construct a modern, clean and wholesome Animal Shelter Building on the real estate described in Exhibit "A" (hereinafter referred to as "premises"), which is attached hereto and incorporated herein by reference, and lease the same to Lessee under the following terms and conditions.

2a. Term and Rental: The length of this agreement shall be for 35 years or as otherwise available and mutually agreed for such loans from USDA Rural Development. Rental installment payments shall be made on a annual or semi-annual or monthly basis as suggested by USDA Rural Development, during the term, including any renewal term, hereof. The yearly rental of the premises for the payment will be provided by USDA rural Development to include the appriate calculated sums to cover the finally determined actual costs for (the calculation of which is hereby authorized and approved):

Operations and Maintenance Costs
Debt Service
Debt Service Reserve
Replacement and Extension Reserve
Amounts needed for other operating costs including but Not limited to
Insurance, Bonds, Utilities, Maintenance, Legal, Bookkeeping, Auditing,
Taxes and Miscellaneous.

2b. Annual Rental Calculation – Restrictions on use. The yearly rental amount is subject to modification by agreement between the parties hereto with approval by USDA Rural Development or its assigns so long as there remains an unpaid balance on the indebtedness to USDA Rural Development or its assigns on annual adjustment date permitted each year. Any increase or decrease in the yearly rental amount shall be based upon a demonstrable increase or decrease in amounts needed for one or more of the amounts used for calculating the yearly rental such as debt service, debt reserve, replacement and extension and operations and maintenance according to the items and format set forth in Exhibit B attached hereto. Each party to this contract shall furnish the other party and USDA Rural Development or its assigns so long as there remains an unpaid balance on the indebtedness to USDA Rural Development or its assigns copies of all its records and evidence concerning the need for increase or decrease in the annual rental. Each party shall afford the other party and USDA Rural Development or its assigns so long as there remains an unpaid balance on the indebtedness to USDA Rural Development or its assigns hereto access to all of each party's books and records concerning the corporate operations, including but not limited to its revenues, rental, operations and maintenance, replacement and extension, debt service and debt reserve. Note: All other provisions hereof notwithstanding, The corporation is organized and will be strictly and exclusively confined to assisting the City of Nevada, Misosuri, by financing construct ion of the facility and collecting the lease income from the property, and after payment of expenses permitted by Section 501©(2), I.R.C., it will actuality pay over and turn over any income at least annually, to the City of Nevada, Misosuri, all as contemplated by Section 501©(2) of the Internal Revenue Code.

3. Limitation on Warranties: Lessee acknowledges and agrees that Lessor has not made, and does not hereby make, any representation, warranty, or covenant, express or implied, with respect to the merchantability, condition, quality, durability, fitness for use, or suitability of the premises in any respect whatsoever or in connection with or for the purposes and uses of Lessee, or any other representation, warranty, or covenant of any kind or character, express or implied, with respect thereto, and Lessor shall not be obligated or liable for actual, incidental, consequential, or other damages of or to Lessee or any other person or entity arising out of or in connection with the use of the premises and the maintenance thereof.

4. Authority and Authorization: Lessee represents, covenants and warrants, and if requested by Lessor, will deliver an opinion of counsel to the effect that: (i) Lessee is a fully constituted political subdivision or agency of the State of Missouri; (ii) the execution, delivery and performance by Lessee of the Lease have been duly authorized by all necessary action on the part of Lessee; and (iii) this Lease constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms. Lessee agrees that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) that it has complied with all bidding requirements where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) that it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

5. Alterations: Lessee will not make any alterations, additions or improvements to the premises without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage at the termination of the tenancy herein created.

6. Liens and Taxes: Lessee shall keep the premises free and clear of all levies, liens and encumbrances except those created under this Agreement. It shall be the responsibility of Lessor to pay, when due, all state, local, and federal real property taxes which may now or hereafter be imposed upon the premises. If Lessor should fail to pay any such real property taxes when due, Lessee shall have the right, but shall not be obligated, to pay any such taxes. If Lessee pays any such taxes for which Lessor is responsible or liable under this Agreement, Lessee shall have the right to recover the same from Lessor.

7. Insurance: - city must name Not for Profit corporation as an insured on its Property and liability coverage:

a. Coverage of Premises: Lessee shall, at all times while Lessee is occupying the premises as a tenant of Lessor, keep all improvements which are now or hereafter a part of the premises insured against loss or damage by fire and the extended coverage hazards for 100 percent of the full replacement value of such improvements with loss payable to Lessor and Lessee as their interests may appear. Any loss adjustment shall require the written consent of Lessor and Lessee. Additionally, any loss adjustment shall require the written consent of the USDA Rural Development or its assigns so long as there remains an unpaid balance on any note and/or deed of trust in favor of the USDA Rural Development which relates to and affects the premises.

b. Personal Injury Liability: Lessee shall maintain in effect, throughout the time Lessee occupies the premises as a tenant of Lessor, personal injury liability insurance covering the premises and its appurtenances and the sidewalks fronting thereon initially in the amount of \$2,000,000 for injury to or death of any one person, and \$4,000,000 for injury to or death of any number of persons in one occurrence. The amount will be changed upon request by the Lessor or USDA to reflect changes in the law or circumstances or assessment of reasonable coverages needed. Such insurance shall specifically insure Lessee against all liability described herein, as well as liability imposed by law. Both Lessee and Lessor shall be named as insureds on the policy.

8. Indemnification: Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorney's fees and court costs, arising in connection with the operation of the Animal Shelter to be located on the premises.

9. Assignment: Without Lessor's prior written consent, and without the prior written consent of the USDA Rural Development or its assigns so long as there remains an unpaid balance on any note and/or deed of trust in favor of the USDA Rural Development or its assigns which relates to and affects the premises, Lessee will not (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the premises or any interest therein; or (ii) sublet the premises, or any part thereof, or permit the same to be used by anyone other than Lessee or Lessee's employees. Subject to the foregoing, this Lease shall inure to the benefit of, and is binding upon, the heirs, executors, administrators, successors and assigns of the parties hereto.

10. Event of Default: The term "Event of Default", as used herein shall mean the occurrence of any one or more of the following:

(a) The failure of Lessee to make any rental payment or other payment hereunder as the same becomes due where any such failure continues for a period of ten (10) days after the due date thereof.

(b) The failure of Lessee to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder, and such failure is not cured within twenty (20) days of any notice sent by Lessor to Lessee which makes specific reference to any such failure.

(c) The discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease, or in any other writing given by Lessee to Lessor, is false, misleading or erroneous in any material respect.

11. Remedies: Upon the occurrence of an Event of Default, if the same be continuing, Lessor may, at its option, exercise any one or more of the following remedies:

(a) Initiate any action for past due rent and/or recovery of the premises leased hereunder.

(b) Sell or lease the premises, or sublease the same for the account of Lessee, holding Lessee liable for all rental payments and other payments due at the time of such selling, leasing or subleasing.

(c) Exercise any other right, remedy or privilege which may be available to Lessor.

12. Rules and Regulations: Any rules or regulations of Lessee relating to and affecting the premises, including any subsequent modifications thereto, shall require the written approval of Lessor and USDA Rural Development or its assigns.

13. Maintenance of Premises: Lessor shall be responsible for maintaining the premises from its Operations and Maintenance Account to the extent of available funds in that account. Lessor shall be responsible for all capitalized expenses relating to the premises to the extent of available funds in Lessor's Replacement and Extension Account.

14. Use of the Premises: No use shall be made of the premises other than as an Animal Shelter without the written consent of Lessor. Additionally, any use of the premises other than as an Animal Shelter, shall require the written consent of the USDA Rural Development or its assigns so long as there remains an unpaid balance on any note and/or deed of trust in favor of the USDA Rural Development or its assigns which relates to and affects the premises.

15. Compliance with Federal Regulations: The parties each agree to comply with USDA Rural Development Form 400-1, an Equal Opportunity Agreement; USDA Rural Development Form 400-4, an Assurance Agreement; and Section 504 of the Rehabilitation Act of 1973 as amended, copies of the same being attached hereto and incorporated herein by reference.

16. Notices: All notices to be given under this Lease shall be in writing and shall be sent by certified mail, return receipt requested, to the other party at the addresses set forth below:

Lessor: City of Nevada, Missouri, City Hall, 110 South Ash Street, Nevada, Missouri, 64772.

Lessee: Nevada Animal Shelter Coportion, c/o Mark Mitchall, Manager, 110 South Ash Street, Nevada, Misosuri 64772.

Either party may change the address to which subsequent notices are to be sent provided any such notice of change of address is sent to the other party by certified mail, return receipt requested.

17. Section Headings: All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

18. Governing Law: This Lease shall be construed in accordance with, and governed by, the laws of the State of Missouri.

19. Delivery of Related Documents: Lessee shall execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease. At the request of Lessor, Lessee will furnish Lessor annual financial statements of Lessee within forty-five (45) days after the end of Lessee's fiscal year. Lessor shall execute or provide, as requested by Lessee, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease. At the request of Lessee, Lessor will furnish Lessee annual financial statements of Lessor within forty-five (45) days after the end of Lessor's fiscal year.

20. Entire Agreement, Waiver: This Lease, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the lease of the premises, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provisions of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. The waiver by Lessor of any breach of Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

21. Utilities: Lessor shall be responsible for the payment of all water, gas, electricity and other public utilities, except telephone service, furnished to the premises to the extent of available funds in its Operations and Maintenance Account so long as Lessee remains a tenant of Lessor.

22. Additional Provisions: Subject to the written approval of the USDA Rural Development or its assigns so long as there remains an unpaid balance on any note and/or deed of trust in favor of the USDA Rural Development or its assigns which relates to and affects the premises, the parties expressly reserve the right to amend the provisions of this Agreement, and to make additions or deletions hereto. Any such amendment, addition, or deletion, shall be set forth in writing and signed by the parties. Possession and the Right to possession are deferred until completion of construction.

Nevada Animal Shelter Corporation,
Lessor,

(Seal)

By: _____
George Knox, President

Attest:

Johnna Williams, Secretary

City of Nevada, Missouri,
Lessee

By: _____
George Knox, Mayor

(Seal)

Attest:

Johnna Williams, City Clerk

By: _____
Mayor

EXHIBIT "A"

Finally approved legal description:

EXHIBIT "B"

Yearly rental for the each full year after loan closing will be \$_____,
As finally calculated by lender in accordance with the following:

<u>Account</u>	<u>Amount</u>
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The rental to be paid by the city will be finally determined by USDA Rural Development at the time of loan approval and will be the sum required to discharge funding provided by USDA Rural Development on an annual basis.

The rental payment will also include the actual O&M experienced by the non-profit corporation.

TOTAL \$

Nevada Animal Shelter Corporation,
Lessor,

(Seal)

By: _____
George Knox, President

Attest:

Johnna Williams, Secretary

City of Nevada, Missouri,
Lessee

(Seal)

By: _____
George Knox, Mayor

Attest:

Johnna Williams, City Clerk

