

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ___ day of September, 2018, between the Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Reno, ("NSHE") and Washoe County and its Regional Animal Services, collectively "WCRAS".

WHEREAS, NSHE is the owner of certain real property in Washoe County, Nevada;

WHEREAS, WCRAS desires to use certain NSHE real property when it is not occupied and is otherwise available, for the purpose of providing emergency services and temporary shelter when needed for livestock being evacuated due to wildfires, flooding, or other emergency situations in the Northern Nevada and California area ("Event"), and NSHE desires to license certain NSHE real property to WCRAS for its use;

WHEREAS, the parties desire to create a short-term license during such Events through this Agreement and do not wish to create any relationship of partnership, joint venture or other association;

NOW THEREFORE, based upon the foregoing, and in consideration of the terms and conditions of this Agreement, and for other good and valuable consideration, NSHE and WCRAS agree as follows:

1. Real Property. Subject to the terms and conditions of this Agreement, NSHE shall grant WCRAS a non-exclusive right ("License") to use a certain portion of real property owned by NSHE, which real property is located in Washoe County, Nevada, and is described in Exhibit "A" attached hereto, specifically Sections C and E as identified in Exhibit A ("Property") during an Event, and which Property is subject to all existing easements, covenants, conditions, and restrictions of record, if any. This license shall be for the specific purpose of using the Property for an Event for a limited period of time. WCRAS agrees and acknowledges that NSHE has the right to use, lease or license the Property to other persons or entities during the term of this Agreement and that the right to use the Property for an Event is subject to the availability of the Property.

2. Term. The Term of this Agreement shall be from September __, 2018, through August 31, 2020.

3. Use Fee. In consideration for the use of the Property, WCRAS shall agree to indemnify NSHE pursuant to Paragraph 8.

4. Use. WCRAS agrees to and shall use the Property for the general purposes of providing emergency services and temporary shelter for the evacuated

livestock during the Event. WCRAS shall use the Property for no other use without NSHE's prior written consent which shall be withheld or given at NSHE's discretion. WCRAS shall not commit or cause to be committed any waste, damage, or misuse of all or any part of the Property. WCRAS shall use the Property on the following terms and conditions:

a. Compliance with Laws. WCRAS shall, at its own expense, promptly and properly observe and comply with all federal, state and local laws, ordinances and regulations and WCRAS shall use the Property in compliance with such laws. WCRAS will adhere to all OSHA safety requirements. If for any reason WCRAS's use of the Property fails to comply with any federal, state or local law and WCRAS fails to bring its use within compliance within 12 hours written notice of such noncompliance, the License for the Event shall terminate upon NSHE's delivery of written notice of termination to WCRAS.

b. Access. WCRAS shall not enter and no access shall be permitted to WCRAS by NSHE to any of the buildings, facilities, or improvements existing upon the Property other than animal shelters, stalls, and/or corrals, nor shall any utilities, other than water and electricity, be used by WCRAS.

c. Activating a License; Locks and Keys. If an Event occurs and WCRAS desires to activate a License of the Property, WCRAS shall contact the Assistant Director, Nevada Agricultural Experiment Station, currently Bo Kindred at ((775) 784-4339 or bkindred@cabnr.unr.edu) to determine whether the Property is available for use during the Event. If Bo Kindred confirms that the Property is available, NSHE shall activate the License under this Agreement through written confirmation to WCRAS, which may be accomplished via electronic mail. At the conclusion of the Event, or when the need for the Property in connection with the Event has ended, WCRAS shall notify NSHE, which may be accomplished via electronic mail, and return any and all access keys to University of Nevada, Reno Facilities Services Department. WCRAS shall obtain access keys directly from Bo Kindred or his designee, and shall not use any other means to access the Property. WCRAS shall be responsible for the cost to repair any damaged locks, gates, fences, or NSHE property that is damaged by unauthorized entry to Property. In the event Bo Kindred is not available, WCRAS must contact Luke Thompson at (805) 540-0914 or lthompson@cabnr.unr.edu or Dr. Chris Pritsos at (775) 771-4006 or pritsos@cabnr.unr.edu, who will be able to confirm whether the Property is available and perform the functions Bo Kindred would otherwise perform as stated in this Agreement.

d. Temporary Fencing. WCRAS shall have the right, at its sole cost and expense, to install temporary fencing and temporary security measures on the Property in consultation with Bo Kindred.

e. Waste/Nuisance/Interference. WCRAS shall not use the Property in any manner that will constitute waste, nuisance, or unreasonable annoyance to occupants of adjacent and surrounding properties. WCRAS shall keep the

Property in safe, neat and clean condition at WCRAS's sole expense. WCRAS shall not interfere with the normal operation and activities of NSHE and WCRAS shall conduct its activities on the Property to minimize damage to the Property and inconvenience to NSHE, its agents, employees and invitees.

f. Dust Abatement. At all times during a ny License, WCRAS shall comply with all applicable local, state and federal ordinances, regulations and laws as to air quality and dust control and ensure that adequate and sufficient dust abatement and control is maintained.

g. Hazardous Materials. Neither WCRAS, nor any of WCRAS's agents, contractors, employees, licensees or invitees shall at any time handle, use, manufacture, store or dispose of in or about the Property any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance (collectively "Hazardous Materials") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). WCRAS shall protect, defend, indemnify and hold NSHE harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any actual or asserted failure of WCRAS to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Property of any Hazardous Materials, or by reason of any actual or asserted failure of WCRAS to keep, observe, or perform any provision of this paragraph.

6. Maintenance and Repairs. NSHE shall deliver the Property to WCRAS in an "as is" condition at the activation of a License. WCRAS shall, at WCRAS's own cost and expense, maintain and repair the Property, reasonable wear and tear excepted, and shall surrender the Property in no worse condition at the termination of this Agreement than it was prior to WCRAS's use.

7. Insurance. WCRAS shall, at WCRAS's sole expense, procure, maintain, and keep in force for the duration of this Agreement the following insurance conforming to the requirements specified below.

a. Insurance Required

1) Workers' Compensation and Employer's Liability Insurance

i. WCRAS shall provide proof of workers' compensation insurance as required by NRS 6168.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required.

2) Commercial General Liability Insurance

i. Limits Required

1. \$2,000,000 General Aggregate
2. \$1,000,000 Products & Completed Operations Aggregate
3. \$1,000,000 Personal and Advertising Injury
4. \$2,000,000 Each Occurrence

ii. Coverage shall be on an occurrence basis and shall be at least as broad as ISO form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and contractual liability coverage.

3) Business Automobile Liability Insurance

- i. Limit required: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- ii. Coverage shall include owned, non-owned, and hired vehicles.
- iii. Coverage shall be written on ISO form CA 00 01 or a substitute providing equal or broader liability coverage.

b. General Requirements

1) Additional Insured: On all insurance policies required by this License, the Nevada System of Higher Education on behalf of the University of Nevada shall be included as an additional insured as respects to this License.

2) Waiver of Subrogation: Each required liability insurance policy shall provide for waiver of subrogation against Nevada System of Higher Education on behalf of the University of Nevada.

3) Cross-Liability: All required liability policies shall provide cross-liability coverage.

4) Approved Insurer: Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers rated at least A- by AM Best and having agents in Nevada upon whom service of process may be made.

c. WCRAS may satisfy any and all of the above insurance requirements with a formal program of self-insurance.

8. Indemnification. WCRAS shall indemnify, defend, and hold harmless NSHE, its officers, employees, and agents from and against any and all liabilities, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by WCRAS or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement and any License hereunder, or which may occur during or which may arise out of an Event.

9. Termination. NSHE shall have the right to terminate this Agreement and any License hereunder at any time and for any reason. At the expiration or earlier termination of this Agreement or any License, WCRAS shall immediately cease use of the Property.

10. Surrender. On the last day of the Term hereof, including or on any sooner

termination, WCRAS shall surrender the Property to NSHE in good, clean and safe condition. If NSHE determines in its discretion that WCRAS, its agents or contractors have caused any damage to the Property or the Property is in need of repair in connection with the exercise of this Agreement, NSHE shall notify WCRAS of WCRAS's responsibility to make such repair. WCRAS shall repair and restore the Property to its original condition as it existed at the commencement of the Term. WCRAS shall perform the repair and restoration required hereunder prior to the expiration of this Agreement, or within ten (10) days of the earlier termination of WCRAS' rights hereunder. In the event that repair and restoration is performed following the termination of this Agreement, the WCRAS Indemnity and Insurance obligations in paragraphs 7 and 8 shall continue until repair and restoration is completed as provided herein.

11. Holding Over. No holdover tenancy by WCRAS is allowed under this Agreement.

12. Assignment. WCRAS may not assign or sublet this Agreement.

13. Notices. Except as otherwise stated herein, all notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested to the following addresses:

If to NSHE, to: Troy Miller
Director of Real Estate
University of Nevada, Reno
Real Estate Office
1664 North Virginia Street
Mail Stop 243
Reno, Nevada 89557

With a copy to: Mary Dugan
General Counsel
University of Nevada, Reno
Mail Stop 0550
1664 N. Virginia
Street Reno, NV
89557-0550

If to WCRAS, to: Shyanne Schull, Director
Washoe County Regional Animal Services
2825A Longley Lane
Reno, Nevada 89502

14. Miscellaneous.

a. After approval by the Washoe County Board of Commissioners,

this Agreement shall be administered by the Director of WCRAS, her successor, or designee.

b. WCRAS shall obtain any and all zoning or other approvals and permits required by law, regulation, or ordinance.

c. This Agreement shall be given effect and construed by application of the laws of the State of Nevada and any action or proceeding arising hereunder shall be brought in the courts of Washoe County in the State of Nevada.

d. Nothing in this Agreement shall be deemed in any way to create between the parties hereto any relationship of partnership, joint venture or association, and the parties hereto hereby disclaim the existence of any such relationship.

e. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction or any other body, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

f. This Agreement may only be amended by a writing signed by the parties hereto.

f. The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided only for convenience of reference and shall not be considered in construing their contents.

g. NSHE and WCRAS hereby agree that both parties were equally influential in preparing and negotiating this Agreement and each had the opportunity to seek advice of legal counsel prior to the execution of this Agreement. Therefore, NSHE and WCRAS agree that no presumption should arise construing this Agreement more unfavorably against any one party.

h. Each writing or drawing referred to herein as being attached hereto as an exhibit or otherwise designate herein as an exhibit hereto is hereby made a part of the Agreement and any License hereunder.

i. WCRAS specifically warrants that 1) WCRAS is duly organized and validly exists under the laws of the State of Nevada and 2) that this Agreement has been authorized by all necessary representatives of WCRAS, is validly executed by an authorized officer or agent of WCRAS and is binding upon and enforceable against WCRAS in accordance with its terms.

[SIGNATURE PAGE TO FOLLOW]

**THE BOARD OF REGENTS OF THE
NEVADA SYSTEM OF HIGHER
EDUCATION ON BEHALF OF THE
UNIVERSITY OF NEVADA, RENO**

By: _____
Vic Redding
Vice President Business &
Finance University of Nevada,
Reno

Date: _____

**WASHOE COUNTY BOARD
OF COUNTY
COMMISSIONERS**

By:
Name
Title:
CHAIR, Washoe County Board of
County Commissioners

Date: _____

RECOMMENDED BY:

William Payne, Dean, CABNR

Date: _____