

# MEMORANDUM

Agenda Item No. 14(A)(10)

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**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

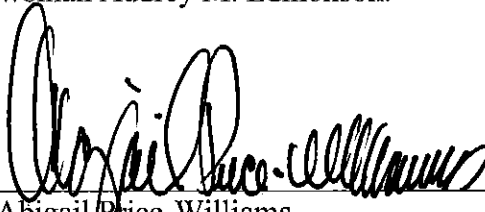
**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution approving Third  
Amendment to the existing  
Development and Lease  
Agreement with the American  
Society for the Prevention of  
Cruelty to Animals for the  
construction, development and  
operation of a spay/neuter clinic  
at 1320 NW 62 Street, Miami,  
Florida

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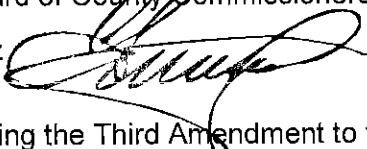
The accompanying resolution was prepared by the Animal Services Department and placed on the agenda at the request of Prime Sponsor Chairwoman Audrey M. Edmonson.

  
Abigail Price-Williams  
County Attorney

APW/uw

**Date:** July 23, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez   
Mayor

**Subject:** Resolution Approving the Third Amendment to the Development and Lease Agreement with American Society for the Prevention of Cruelty to Animals for the construction, development and operation of a spay/neuter clinic at 1320 Northwest 62nd Street, Miami, Florida

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### **Recommendation**

It is recommended that the Board of County Commissioners (Board) approve the attached third amendment (amendment) to the Development and Lease Agreement between Miami-Dade County (the "County"), through its Department of Animal Services ("ASD"), and the American Society for the Prevention of Cruelty to Animals (the "ASPCA"), for the construction, development and operation of a spay/neuter clinic at 1320 Northwest 62<sup>nd</sup> Street, Miami, Florida (the "Property"). More specifically, the amendment does the following:

- Provide approval for the ASPCA to operate the facility upon completion of the Facility's construction but prior to Final Acceptance.
- Allow ASPCA to occupy the building upon receipt of the Certificate of Use (CU), Temporary Certificate of Occupancy (TCO), Certificate of Occupancy (CO) and any other necessary permits.

### **Scope**

The property is located in Commission District 3, which is represented by Commissioner Audrey M. Edmonson. However, services will be offered to all County residents.

### **Fiscal Impact/Funding Source**

There is no additional fiscal impact to the County as a result of this amendment.

### **Track Record/Monitor**

The County has no record of negative performance issues with the ASPCA. Ms. Gilda Nuñez, Chief of Outreach and Development, of the Animal Services Department, will monitor this Agreement. The ASPCA is a nationally recognized animal rescue organization and has been in operation since 1866. ASD has been a recipient of ASPCA grants and support over the past eight years.

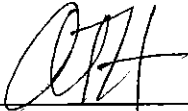
### **Delegation Authority**

The resolution authorizes the County Mayor, or the County Mayor's designee to: (a) provide approval for the ASPCA to operate the facility prior to Final Acceptance (b) allow the ASPCA to occupy the building upon receipt of the Temporary Certificate of Occupancy, Certificate of Occupancy and any other necessary permits.

### **Background**

In January 2016, ASD partnered with the ASPCA to develop, construct and lease a spay/neuter clinic on existing County-owned property, which is located in the Liberty City area, to allow better accessibility to area residents. Currently, the anticipated construction completion date is mid to late July 2019, at which point the ASPCA will obtain or will have already obtained a CU, TCO or CO. However, it may take several months for the ASPCA to complete punch list items, if any, and complete other items necessary to obtain Final Acceptance from the County. As such, it is in the best interest of the County

and its residents for the facility to open once construction has been completed given the need in the community for fully or partially subsidized veterinary care, particularly in the Liberty City area. The ASPCA will remain responsible for fulfilling all of its obligations necessary to obtain Final Acceptance within the time period required by the Agreement and the Commencement Date will remain the date of Final Acceptance. On May 20, 2016, the ASPCA and ASD executed the First Amendment to the Agreement, which corrected the Final Acceptance deadline date in the agreement that was unintentionally not updated to coincide with the rest of the construction milestones. On January 18, 2019, the ASPCA and ASD executed the Second Amendment to the Agreement to clarify the end date of the security which was stipulated in the Agreement that ASPCA and the Contractor each obtain a bond or other security and must be maintained during the agreement.



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Alina T. Hudak  
Deputy Mayor

### THIRD AMENDMENT TO DEVELOPMENT AND LEASE AGREEMENT

This serves as the third amendment effective as of \_\_\_\_\_, 2019 (the "Third Amendment") to the Development and Lease Agreement made and entered into as of May 20, 2016 (Original Agreement"), as amended by the First Amendment effective as of May 16, 2018 (the "First Amendment") and the Second Amendment effective as of January 18, 2019 (the "Second Amendment, and collectively with the Original Agreement and First Amendment, "Agreement") by and between The American Society for the Prevention of Cruelty to Animals ("ASPCA"), and Miami-Dade County (the "County"). Capitalized terms used herein but not defined shall have the meaning assigned to such terms in the Agreement.

**WHEREAS**, the Parties entered into the Agreement for the development of the Property including the Construction of a new building in accordance with the terms of the Agreement, which upon completion of Construction, will be leased to ASPCA and operated by ASPCA as a spay/neuter and community medicine clinic that is open to the general public of the County in accordance with the terms of this Agreement;

**WHEREAS**, pursuant to Section 14 of the Agreement, the County grants to the ASPCA, and the ASPCA accepts from the County, the right to use and lease the Property and Facility upon the Commencement Date;

**WHEREAS**, under the Agreement, "Commencement Date" means the date upon which the initial term of the lease of the Property and the Facility is to commence and shall be the date of "Final Acceptance";

**WHEREAS**, "Final Acceptance" takes place when: (1) the Project has reached full completion, (2) a Certificate of Occupancy (CO) has been obtained by ASPCA or its Contractor, (3) a Certificate of Use (CU) has been obtained by ASPCA or its Contractor, (4) all punch list items have been completed by ASPCA or its Contractor, and (5) Substantial Completion from the architect of record has been obtained by ASPCA. Except due to a Force Majeure Event and subject to certain provisions in the County Agreement, Final Acceptance shall occur no later than December 31, 2019;

**WHEREAS**, due to circumstances beyond the ASPCA's control, the Facility's construction has been delayed;

**WHEREAS**, given the need in the community for fully or partially subsidized veterinary care, particularly in the Liberty City area, the Parties believe it is in the best interest of the Parties and the County's residents for the ASPCA to the Facility, and open it to the public, upon receipt of a Temporary Certificate of Occupancy (TCO) (as defined below), Certificate of Use (CU) and other permits necessary to operate under Applicable Law but prior to Final Acceptance; and

**WHEREAS**, the Parties desire to enter into the Third Amendment to allow the ASPCA to occupy the building upon receipt of a Temporary Certificate of Occupancy (as

defined below), Certificate of Use (CU) and other permits necessary to operate under Applicable Law but prior to Final Acceptance and amend other provisions as necessary in connection with the foregoing.

**NOW, THEREFORE**, in consideration of the mutual rights, obligations, promises and covenants contained herein and mutual benefits to be derived from this Third Amendment, the adequacy of which is hereby accepted and acknowledged by the Parties, the Parties hereto agree as follows:

1. The Parties hereby amend the Agreement to delete Section 2(h) in its entirety and replace it with the following:

“(h) ‘Commencement Date’ means the date upon which the initial term of the lease of the Property and Facility is to commence and shall be the date of the ASPCA’s receipt of a Temporary Certificate of Occupancy (TCO), Certificate of Use (CU) and other permits necessary to operate under Applicable Law.”

2. The Parties hereby amend the Agreement to insert the following definition of “Temporary Certificate of Occupancy (TCO)” as Section 2(ss) and re-letter the remaining definitions as applicable:

“(ss) ‘Temporary Certificate of Occupancy (TCO)’ means a certificate issued by the appropriate agency of the jurisdiction in which the Property is located, permitting temporary public occupancy and use of the Facility until a Certificate of Occupancy (CO) is obtained.”

3. The Parties hereby amend the Agreement to replace “Certificate of Occupancy (CO)” with “Temporary Certificate of Occupancy (TCO)” in the first sentence of Section 12(c).

4. The Parties hereby amend the Agreement to replace “Final Completion date” with “Commencement Date” in the fourth sentence of Section 12(c).

5. The Parties hereby amend the Agreement to replace “Final Approval” with “Final Acceptance” in the last sentence of Section 12(c).

6. The Parties hereby amend the Agreement to delete Section 12(h) in its entirety and replace it with the following:

“(h) ASPCA and/or the Contractor shall use all diligence and necessary manpower to complete the Project (i.e., obtain Final Completion) within nineteen (19) months from the date of the Notice to Proceed, consistent with the approved Project Schedule, unless otherwise agreed in writing by the Parties. Contractor shall seek all inspections necessary from all agencies having jurisdiction over the Project, as required to obtain a Certificate of Occupancy within the nineteen (19) months Construction time, unless such nineteen-month period is extended by the

Parties. A Certificate of Use (CU) shall be the responsibility of the County prior to a Temporary Certificate of Occupancy (CO) being obtained by the Contractor.”

7. The Parties hereby amend the Agreement by deleting the last sentence of Section 14 and replacing it with the following:

“Rental for the Property and the Facility shall be \$1.00 per year. ASPCA shall pay the first year’s rent payment within thirty (30) days after the Commencement Date, and therefore, ASPCA shall pay the rent thirty (30) days prior to each anniversary date of the Commencement Date. ASPCA shall obtain Final Acceptance by December 31, 2019, unless otherwise agreed by the Parties. Final Acceptance shall be memorialized in a written letter agreement in a form to be agreed upon by the Parties and signed by an authorized designee of each Party.”

8. The Parties hereby amend the Agreement to replace “Commencement Date” with “Final Acceptance date” in the third sentence of Section 18(a).

9. Except to the extent specifically modified by the Third Amendment, all provisions of the Agreement remain in full force and effect. The Third Amendment and the Agreement constitute the entire, full and complete agreement between the Parties concerning the subject matter hereof, and supersedes all prior or contemporaneous oral or written communications.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed the Third Amendment:

ATTEST:

MIAMI-DADE COUNTY, FLORIDA  
By Its BOARD OF  
COUNTY COMMISSIONERS on the

HARVEY RUVIN, CLERK

\_\_\_\_\_ day of \_\_\_\_\_, 2019

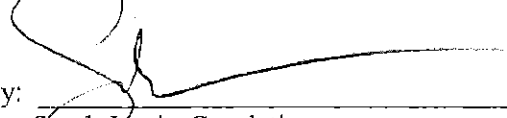
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Mayor

Approved by County Attorney as to  
form and legal sufficiency. \_\_\_\_\_

Monica Rizo

THE AMERICAN SOCIETY FOR THE  
PREVENTION OF CRUELTY TO  
ANIMALS

By:   
Sarah Levin Goodstine  
Senior Vice President, Operations &  
Strategy

Date: July 9, 2019

Sworn to before me this  
9 day of July, 2019

Adonia David  
Notary Public

WITNESSED:

By: Barré Martin  
Name: BARRÉ MARTIN  
Title: Executive Assistant, ASPCA

By: Marylyn Carebello  
Name: Marylyn Carebello  
Title: Senior Director - Staff Attorney

ADDONIA DAVID  
Notary Public, State of New York  
No. 02DA6307322  
Qualified in Bronx County 22  
Commission Expires 07/07/20



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(10)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required



Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A)(10)  
7-23-19

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING THIRD AMENDMENT TO THE EXISTING DEVELOPMENT AND LEASE AGREEMENT WITH THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS FOR THE CONSTRUCTION, DEVELOPMENT AND OPERATION OF A SPAY/NEUTER CLINIC AT 1320 NW 62 STREET, MIAMI, FLORIDA

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves the third amendment to the Development and Lease Agreement between the County and the American Society for the Prevention of Cruelty to Animals in substantially the form attached to the Mayor’s memorandum, and directs the County Mayor or designee to execute said amendment and exercise all rights contained therein.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

- |                                |                      |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman |                      |
| Rebeca Sosa, Vice Chairwoman   |                      |
| Esteban L. Bovo, Jr.           | Daniella Levine Cava |
| Jose “Pepe” Diaz               | Sally A. Heyman      |
| Eileen Higgins                 | Barbara J. Jordan    |
| Joe A. Martinez                | Jean Monestime       |
| Dennis C. Moss                 | Sen. Javier D. Souto |
| Xavier L. Suarez               |                      |

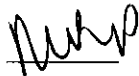
The Chairperson thereupon declared the resolution duly passed and adopted this 23<sup>rd</sup> day of July, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Monica Rizo Perez