

AFTER RECORDING MAIL TO:

CITY OF DETROIT, DEPARTMENT OF PUBLIC WORKS  
CITY ENGINEERING DIVISION  
65 CADILLAC TOWER, SUITE 1000  
DETROIT, MI 48226

AND

MICHIGAN HUMANE SOCIETY  
30300 TELEGRAPH, SUITE 220  
BINGHAM FARMS, MI 48025

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### MAINTENANCE AGREEMENT

This Agreement is made and entered into this 27<sup>th</sup> day of September, 2014 by and between the City of Detroit, a body public through its Department of Public Works, (referred to as the "City") and Michigan Humane Society, a not-for-profit corporation, the owner of property at 7887 Chrysler, Detroit, Michigan.

NOW, THEREFORE, for valuable consideration, including the covenants and undertakings herein contained, it is mutually agreed as follows:

1. **Purpose of Agreement:** Michigan Humane Society agrees to construct and/or maintain during the Term set forth in Paragraph 2 the following infrastructure improvements as detailed in the engineering plans attached as Exhibit "A" and incorporated by reference herein:
  - a. **Public Alley Improvements:** Asphalt re-paving of a portion of a public alley in the blocks bound by Chrysler, Clay, Cameron and Wellington Streets as shown on Exhibit A. The improvements stated herein are attached as Exhibit "A" which contains Engineering Plans prepared by the professional engineering firm of Ghafari Associates, LLC, dated June 26, 2014,
2. **Term:** The Term of this agreement shall commence upon completion of the Michigan Humane Society's Animal Care Facility and re-paving of the portion of the east/west public alley from Chrysler to the north/south public alley and shall continue for a period the latter of a) ten (10) years thereafter, or b) to the date the Michigan Humane Society Property is no longer used. The improvements set forth within Exhibit "A" are scheduled to commence upon execution of this Maintenance Agreement and are to be completed no later than December 1, 2015.

3. **Scope of Definition of Duty to Maintain and Repair:** The CITY hereby contracts with Michigan Humane Society for the maintenance and repair of the improvements set forth in Paragraph 1 of this Agreement. The terms "maintenance and repair" shall include snow removal and the repair of ordinary wear and tear associated with asphalt paving and construction and the scope of work approved by the City of Detroit as set forth in Exhibits "A". It is exclusive, however, of damages incurred as result of work done within the public right of ways identified in this Agreement either by the CITY or any public utility or other governmental entity, holding a recorded easement or other such encumbrance. Any such damages incurred or caused by a municipal, other governmental or publicly regulated utility shall be repaired at such third party's expense. Michigan Humane Society shall perform its obligation under this Agreement in accordance with all applicable municipal ordinances, regulation and laws of the State of Michigan.
4. **Financial Responsibility.** It is understood that all physical improvements and repairs set forth herein shall be at the sole cost and expense of Michigan Humane Society except as set forth to the contrary in Paragraph 3.
5. **Indemnification and Hold Harmless.** Michigan Humane Society hereby agrees to indemnify, defend and hold the City harmless only from all loss, costs, expense, actions, claims causes of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for damage to or destruction of property arising from the sole gross negligence or willful misconduct of Michigan Humane Society in the performance of its obligations as set forth under this Agreement
6. **Insurance:** Michigan Humane Society covenants and agrees at its sole cost and expense to maintain for the mutual benefit of it and the City commercial general liability insurance on an occurrence from against claims for bodily injuries (including but not limited to death) or property damage (including but not limited to destruction) occurring in the portion of the public right of ways described herein set forth in Exhibit "A", at combined single limits of not less than One Million (\$1,000,000) Dollars per occurrence, One Million (\$1,000,000) dollars aggregate, subject to the exclusion set forth in Paragraph 3. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be canceled or materially modified without prior written notice by certified mail to the City to the attention of the City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226 Attn: Risk Management Division. Said coverage may be affected by a certificate of insurance issued upon so-called "blanket" coverage, but either a certificate or the original of an insurance policy affecting such coverage. This insurance shall be primary and any such insurance maintained by the City shall be secondary and non-contributory and excess over the City's comprehensive general liability insurance. Michigan Humane Society shall be responsible for payment of all deductibles relating to insurance maintained by Michigan Humane Society provided however that City waives and releases Michigan Humane Society from any claims for such deductible amount to the extent the City has liability insurance coverage unless this waiver and release causes an increase in the City's insurance premiums, in which event the City shall

- give Michigan Humane Society written notice of such additional insurance premiums and Michigan Humane Society's liability for such deductible shall be waived and released upon the reimbursement to the City of such additional premiums. The provision requirement Michigan Humane Society to carry such insurance shall not be constructed as waiving or restructuring the liability of Michigan Humane Society under this Agreement.
7. **Right to Assign.** Michigan Humane Society may assign its rights and obligations under this Agreement to an entity under Michigan Humane Society control, such as a wholly owned affiliate or subsidiary, without City's prior consent. Michigan Humane Society shall immediately notify in writing the City of such an assignment and such assignment shall not relieve Michigan Humane Society of its obligations hereunder in the event its assignee fails to comply with the terms and conditions of this Agreement. Michigan Humane Society may also assign its rights and obligations under this Agreement to an unrelated third party upon City's prior consent, not to be unreasonably withheld. Upon such authorized assignment to an unrelated third party, Michigan Humane Society's obligations under this Agreement will cease.
  8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
  9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to or modification of this Agreement shall be of no force and effect unless it is in writing and signed by an authorized signatory for each of the parties.
  10. **Successors and Assigns.** This agreement shall be binding upon the successors and assigns. This Agreement is for the exclusive benefit of the parties stated herein shall not be deemed to give any legal or equitable right remedy or claim whatsoever to any other person.
  11. **Binding Arbitration.** All disputes under the terms of this Agreement will be resolved through binding Arbitration under the rules and procedures of the American Arbitration Association. The parties agree such Arbitration shall be conducted by an Arbitrator mutually agreed upon by the parties. Any such arbitration will be conducted in or near Detroit, Michigan.
  12. **Improvement Changes:** Any changes outside the scope of this agreement by Michigan Humane Society to the public right of ways described herein shall be subject to the prior approval of the City.

**SIGNATURES FOLLOW ON PAGE 4**



City of Detroit, Through its Department of public Works – City Engineering Division acknowledge this agreement with said company, until the City of Detroit, through its Department of Public Works – City Engineering Division deems this agreement void/useless.

By: 

Richard Doherty, City Engineer  
City of Detroit  
Department of Public Works  
City Engineering Division

Approved as to form & execution

By:   
Assistant Corporation Counsel

City of Detroit  
Law Department

