

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Office of the Director  
625 Broadway, 12th Floor, Albany, New York 12233-7011  
P: (518) 402-9706 | F: (518) 402-9020  
[www.dec.ny.gov](http://www.dec.ny.gov)

Animal Care and Control of New York City, Inc.  
Risa Weinstock  
11 Park Place, Suite 805  
New York, NY 10007

APR 8 2019

RE: Site Name: Queens Animal Shelter and Care Center  
Site No.: C241230  
Location of Site: 151 Woodward Avenue, Queens County, Queens, NY 11385

Dear Ms. Weinstock:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Queens Animal Shelter and Care Center Site.

If you have any further questions relating to this matter, please contact the project attorney for this site, Kieran McCarthy, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 625 Broadway, Albany, NY 12233-1500 or by email at [kieran.mccarthy@dec.ny.gov](mailto:kieran.mccarthy@dec.ny.gov).

Sincerely,



Michael J. Ryan, P.E.  
Director  
Division of Environmental Remediation

Enclosure

ec: Sarah Quandt, Project Manager  
cc: Kieran McCarthy, Esq.  
Jennifer Andaloro, Esq./Lisa Kranick



Department of  
Environmental  
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
BROWNFIELD CLEANUP PROGRAM  
ECL §27-1401 *et seq.*

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In the Matter of a Remedial Program for

**BROWNFIELD SITE  
CLEANUP AGREEMENT  
Index No. C241230-03-19**

**Queens Animal Shelter and Care Center**

DEC Site No: C241230

Located at: 151 Woodward Avenue  
Queens County  
Queens, NY 11385

Hereinafter referred to as "Site"

by:

Animal Care and Control of New York City, Inc.  
11 Park Place, Suite 805, New York, NY 10007

Hereinafter referred to as "Applicant"

-----  
**WHEREAS**, the Department of Environmental Conservation ("Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

**WHEREAS**, the Applicant submitted an application received by the Department on November 23, 2018; and

**WHEREAS**, the Department has determined that the Site and Applicant are eligible to participate in the BCP.

**NOW, THEREFORE**, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicant, Animal Care and Control of New York City, Inc., is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Tangible Property Tax Credit Status

The Site is located in a City having a population of one million or more and the Applicant has not requested a determination that the Site is eligible for tangible property tax credits. It is therefore presumed that the Site is not eligible for tangible property tax credits. In accordance with ECL § 27-1407(1-a), the Applicant may request an eligibility determination for tangible property tax credits at any time from application until the site receives a certificate of completion except for sites seeking eligibility under the underutilized category.

### III. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 0.986 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 4-3376-1  
Street Number: 1902 Flushing Avenue, Queens  
Owner: 59-15 Holding Corp. and 35 Realty Corp.

Tax Map/Parcel No.: 4-3376-7  
Street Number: 151 Woodward Avenue, Queens  
Owner: 59-15 Holding Corp. and 35 Realty Corp.

### IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicant shall be sent to:

Sarah Quandt  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233  
[sarah.quandt@dec.ny.gov](mailto:sarah.quandt@dec.ny.gov)

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Christine Vooris (electronic copy only)  
New York State Department of Health  
Bureau of Environmental Exposure Investigation  
Empire State Plaza  
Corning Tower Room 1787  
Albany, NY 12237  
[christine.vooris@health.ny.gov](mailto:christine.vooris@health.ny.gov)

Kieran McCarthy, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14th Floor  
Albany, NY 12233  
[kieran.mccarthy@dec.ny.gov](mailto:kieran.mccarthy@dec.ny.gov)

2. Communication from the Department to Applicant shall be sent to:

Animal Care and Control of New York City, Inc.  
Attn: Risa Weinstock  
11 Park Place, Suite 805  
New York, NY 10007  
[rweinstock2@nycacc.org](mailto:rweinstock2@nycacc.org)

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

APR 8 2019

THIS BROWNFIELD CLEANUP AGREEMENT IS  
HEREBY APPROVED, Acting by and Through the  
Department of Environmental Conservation as Designee  
of the Commissioner,

By:

  
Michael J. Ryan, P.E., Director  
Division of Environmental Remediation



CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, and agrees to be bound by this Agreement.

Animal Care and Control of New York City, Inc.

By: [Signature]

Title: Pres. & CEO

Date: 4/3/19

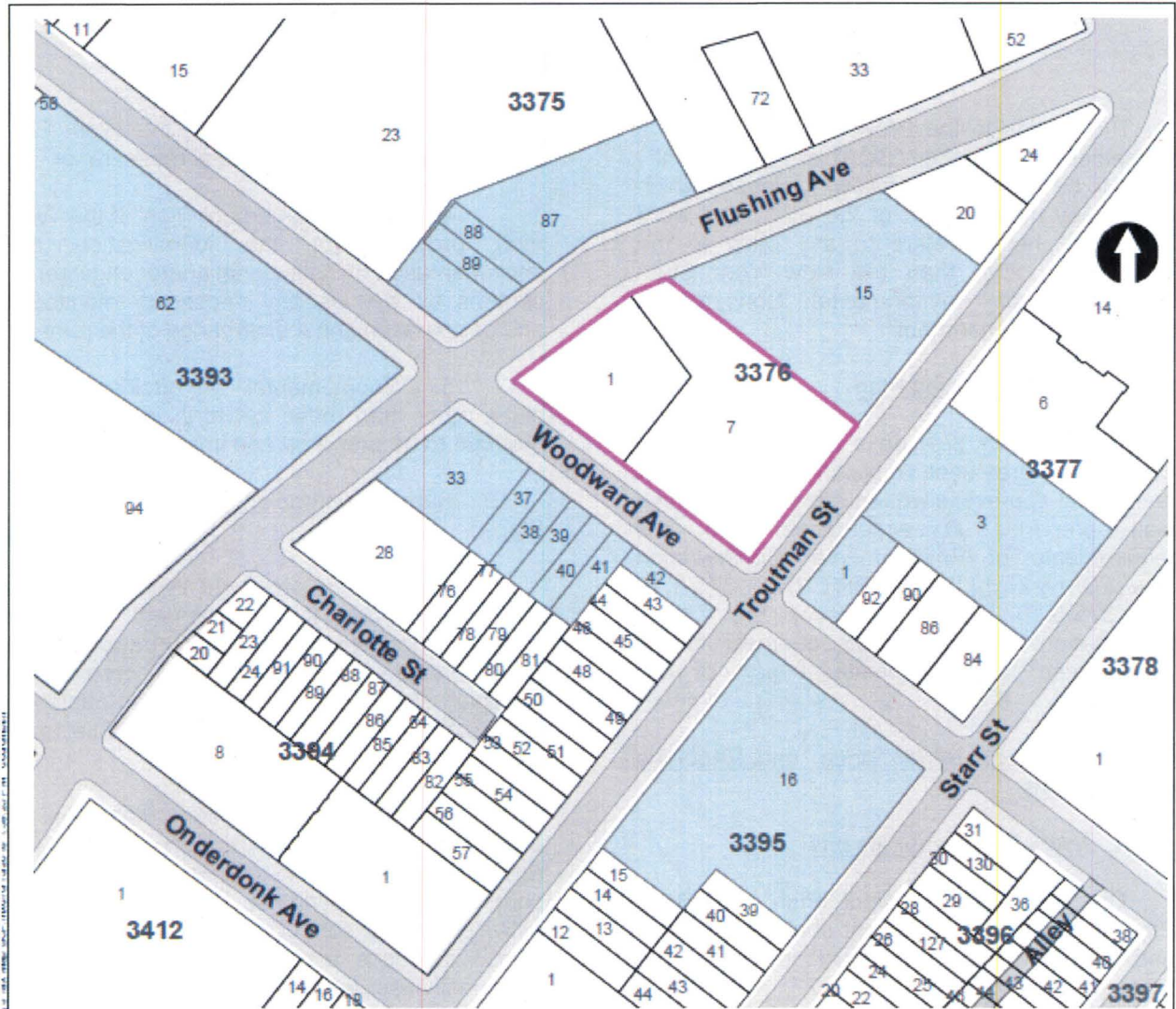
STATE OF NEW YORK )  
COUNTY OF New York ) ss:

On the 3rd day of April in the year 2019, before me, the undersigned, personally appeared RISA NEWSTOCK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



[Signature]  
Signature and Office of individual taking acknowledgment

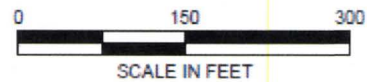
# EXHIBIT A SITE MAP



Adjacent Property Owners		
Block	Lot	Owner Name
3376	15	Tri-Boro Shelving & Partition Corp.
3377	3	Anmarco Corp.
3377	1	Carlos Delgado Garcia
3395	16	SL Woodward Holdings LLC
3394	42	172 Woodward Ave., Corp.
3394	41	Elizabeth Torres
3394	40	Mirsad Cekic
3394	39	Deownarine Bhairo
3394	38	Dragan Panic
3394	37	154 Woodward LLC
3394	33	Flushing Realty Holding Corp.
3393	62	Willowen Management Corp.
3375	87	MP2, LLC
3375	89	1907 Realty LLC
3375	88	1907 Realty LLC

## LEGEND

- PROJECT SITE BOUNDARY
- ADJACENT PROPERTY OWNERS
- 7 LOT BOUNDARY AND TAX LOT NUMBER
- 3376** BLOCK NUMBER



Map Source:  
NYCDOCP (NYC Dept. of City Planning) GIS database



440 Park Avenue South, New York, NY 10016

**Queens Animal Shelter**  
151 Woodward Avenue  
Queens, New York

**Tax Map and Site Boundary**

DATE  
**11/16/2018**

PROJECT NO.  
**180291**

FIGURE  
**3**



## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "BCA" or "Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

#### I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of Environmental Conservation Law (ECL) § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

#### II. Development, Performance, and Reporting of Work Plans

##### A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the Site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

##### B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein. All work undertaken as part of a remedial program for a Site must be detailed in a department-approved Work Plan or a submittal approved in form and content by the Department.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the

provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

#### C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. In addition, Applicant shall include with every report submitted to the Department a schedule for the submission of any subsequent work plan required to meet the requirements of ECL Article 27 Title 14. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

#### D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law. All work undertaken as part of a remedial program, including work undertaken pursuant to submittals other than Work Plans, must be approved by the department prior to implementation by the Applicant.

#### E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.



2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

#### F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

### III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

### IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the Site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

### V. Payment of State Costs (Applicable only to Applicants with Participant Status)

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management  
Division of Environmental Remediation  
New York State  
Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7012

D. Each party shall provide written notification to the other within ninety (90) days of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply.

Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL § 27-1409(2) and ECL § 71-4003.

#### VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

#### VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

#### VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

#### IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

#### X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy



provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

#### XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

#### XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

#### XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to Paragraph V of Appendix A of this Agreement, if applicable.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

#### XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, if applicable, and VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local



permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be



eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.



Animal Care Centers of NYC  
11 Park Place, Suite 805  
New York, NY 10007  
(212) 788-4000  
nycacc.org

April 4, 2019

Michael J. Ryan, P.E., Director  
New York State Department of Environmental Conservation  
Division of Environmental Remediation, 12<sup>th</sup> Floor  
625 Broadway  
Albany, NY 12233-7011



**Re: Queens Animal Shelter and Care Center**

Dear Mr. Ryan,

Enclosed please find two original BCAs, signed by Risa Weinstock, President and Chief Executive Officer of Animal Care and Control of New York City, Inc., dba Animal Care Centers (ACC). Also enclosed is a copy of ACC's bylaws which, pursuant to Section 4.2, authorize Ms. Weinstock to bind ACC.

ACC greatly appreciates acceptance into the Brownfield Cleanup Program and we look forward to working with you on this project.

Please do not hesitate to contact me at 212-676-8558 if you have any questions regarding the enclosed.

Many thanks,

Jennifer Piibe  
General Counsel  
Animal Care Centers of NYC



Animal  
Care Centers  
of NYC

11 Park Place, Suite 5  
New York, NY 10007  
Fax (212) 341-3039  
www.nycacc.org

## AMENDED AND RESTATED BYLAWS

OF

ANIMAL CARE & CONTROL OF NYC, dba ANIMAL CARE CENTERS OF NYC

(Amended and Restated as of August 1, 2016)

### ARTICLE I Membership

The Corporation shall have no members.

### ARTICLE II Directors

Section 2.1. Powers. The management of the affairs of the Corporation shall be vested in the Board of Directors which shall have the general power to control and manage the affairs and the property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation. The Board of Directors shall have the power to adopt rules and regulations governing its actions.

Section 2.2. Number and Appointment of Directors. The number of Directors shall be thirteen (13) to be selected as follows:

Ex Officio Directors. The following persons, by virtue of their office, shall serve as Directors (the "Ex Officio Directors"): (i) the Commissioner or Acting Commissioner of the Department of Health and Mental Hygiene, (ii) the Commissioner or Acting Commissioner of the Department of, New York Parks and Recreation and (iii) the Deputy Commissioner or Acting Deputy Commissioner of the Police Department in Charge of Community Affairs. Such persons shall have the right to vote on all matters on which Directors are entitled to vote by law or these By-laws except as otherwise provided in these By-laws. Each of said Commissioners or Deputy Commissioner shall constitute a special district that is entitled to appoint an alternate ("Alternate Director"). In the absence of an Ex Officio Director from a meeting of the Board, his or her

Alternate Director may, upon written notice to the Secretary of the Corporation, attend such meeting and exercise therein the rights, powers, and privileges of the absent Ex Officio Director.

Appointed Directors. Seven (7) Directors ("the Appointed Directors") shall be appointed by the Mayor of the City of New York ("the City") or the Deputy Mayor for Administration from among candidates who have been recommended by the Nominating Committee (see Article II, Section 2.9 below).

Directors by Vote. Three (3) Directors by vote ("the Directors by Vote") shall be nominated pursuant to Section 2.9 and shall be appointed by a vote pursuant to Section 3.6.

Ex Officio, Appointed Directors and Directors by Vote. Any Director or Alternate Director who is an official or employee of the City of New York or any agency of the City of New York shall serve as such in the furtherance of the interests of the City of New York.

Section 2.3. Terms of Office. Each Appointed Director shall serve for a term of four years and until his or her successor shall have been appointed, or until his or her earlier death, resignation or removal, except as otherwise provided in these By-laws. The terms of office of each Ex Officio Director who is a Commissioner or Deputy Commissioner of a Department referred to in section 2.2 shall expire upon such person's ceasing to hold the office of Commissioner or Deputy Commissioner of the Department referred to in section 2.2. In the case of an Ex Officio Director who is a Commissioner, the Acting Commissioner of such Department shall succeed the Commissioner as an Ex Officio Director. In the case of the Ex Officio Director who is a Deputy Commissioner of the Police Department, his or her successor as such Deputy Commissioner, or the Acting Deputy Commissioner of the Police Department in Charge of Community Affairs, if one shall have been appointed, shall succeed such Deputy Commissioner as an Ex Officio Director of the Corporation.

Section 2.4. Vacancies. Any vacancy among the Appointed Directors may be filled by appointment by the Mayor or the Deputy Mayor for Administration at any time. Any vacancy among the Directors by Vote may be filled by a Board vote pursuant to Section 3.6.



Section 2.5. Resignation. Any Appointed Director or Director by Vote may resign at any time by delivering a resignation in writing to the Executive Director or the Chairman of the Board. Such resignation shall take effect upon receipt or at the time specified in the notice and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 2.6. Removal. Any Appointed Director or Director by Vote may be removed with or without cause by vote of a majority of the entire Board, at any annual or special meeting of the Board, notice of which shall have referred to the proposed action.

Section 2.7. Chairperson of the Board. The Chairperson of the Board of Directors shall be elected by the Board at the annual meeting of the Directors. The Chairperson shall serve in such position until his or her successor is designated at the following annual meeting of the Directors. The Chairperson shall preside at all meetings of the Board of Directors and the Executive Committee; provided that, in the absence of the Chairperson from any meeting, the Directors present at the meeting shall select one of their number to preside thereat. The Chairperson shall be, ex officio, a member of all Committees of the Board. The Chairperson shall have such other duties as are properly required by the Board of Directors or the Executive Committee.

Section 2.8. Executive Committee. The Board of Directors may appoint an Executive Committee, which shall consist of the Chairperson and such other Directors as the Board of Directors may appoint. The Chairperson of the Board shall also be Chairperson of the Executive Committee. The Executive Committee shall have all powers of the Board of Directors except as provided in these By-laws or by law.

Section 2.9. Nominating Committee. The Nominating Committee shall consist of two Ex-Officio Directors and two Appointed Directors, as the Board of Directors may appoint. The Nominating Committee shall be constituted annually, and shall solicit and recommend candidates for membership on the Board. The number of candidates recommended shall be greater than one for each position to be filled.

Section 2.10. Other Committees. The Board of Directors may by resolution provide for one or more other Committees, which, to the extent provided in the resolution or resolutions

establishing them, shall have and may exercise such powers as may be lawfully delegated by the Board of Directors, and designate Directors to serve as members and the chairperson thereof.

Section 2.11. Provisions Applicable to Committees. Each Committee shall keep records of its proceedings and report the same from time to time to the Board of Directors. No Committee shall have authority with respect to the following matters:

- (a) the filling of vacancies in any Committee;
- (b) the amendment or repeal of these By-laws or the adoption of new By-laws;
- (c) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable; or
- (d) the purchase, sale, mortgage or lease of real property.

Section 2.12. Compensation. Directors and Alternate Directors shall serve without compensation.

### ARTICLE III

#### Meetings of Directors and Committees

Section 3.1. Annual Meeting. The annual meeting of the Directors shall be held at the principal office of the Corporation on the third Tuesday in the month of January at 10:00 a.m., or at such other place within the City of New York, and/or at such other time, as the Board of Directors, the Chairperson or the Executive Director may prescribe. If the third Tuesday in the month of January is a legal holiday in any year, the meeting shall be held at the same place on the next business day following that is not a legal holiday at 10:00 a.m., or at such other place within the City of New York or at such other time as the Board of Directors, the Chairperson or the Executive Director may prescribe.

Section 3.2. Other Meetings. Regular and special meetings of the Board of Directors, other than those regulated by statute, shall be held at such times and at such places in the State of New York or elsewhere as the Board of Directors, the Executive Committee, the Chairperson or the Executive Director may determine. A special meeting shall be called by the Chairperson, the Executive Director or the Secretary at the request in writing of at least one-

third of the Directors then in office. Such request shall state the general nature of the business to be transacted at the meeting. Meetings of any Committee shall be held at such times and places as may be determined by the Chairperson or the Executive Director, or by, or pursuant to procedures adopted by, the Board of Directors or such Committee.

Section 3.3. Notice of Meetings. Written notice of each meeting of the Board of Directors shall be given by first class mail, postage prepaid, not less than 24 hours before such meeting directed to each Director at such Director's address as it appears on the records of the Corporation (or, if such Director shall have filed with the Secretary a written request that notices be mailed to some other address, at such other address), by delivery in person, or by delivery via electronic mail; provided, however, that such notice may be waived by any Director or his or her Alternate by signing a written waiver of notice before or after the meeting or by attending the meeting, without protesting lack of notice prior to the conclusion of the meeting..

Section 3.4. Procedure. The order of business and all other matters of procedure at every meeting of Directors or any Committee may be determined by the person presiding at the meeting.

Section 3.5. Quorum. At all meetings of the Board of Directors, except where otherwise provided by law or these By-laws, a quorum shall be required for the transaction of business and shall consist of a majority of the entire Board of Directors, provided that at least one of the Ex-officio Directors is present. If a quorum is not present, the Directors present may adjourn the meeting from time to time to such time and place as they may determine, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.6. Vote Required. All questions, except those for which the manner of deciding is specifically prescribed by law or these By-laws, shall be determined by vote of a majority of the Directors or Committee members or their respective Alternates present at any meeting at which a quorum is present. However a vote of a two thirds majority of the entire Board is required for any of the following actions:

- (a) appointing or removing Officers of the Corporation, and fixing such Officers' compensation;
- (b) appointing additional Directors to the Executive Committee;



- (c) adding to, amending, altering or repealing these By-laws or the Certificate of Incorporation; or
- (d) purchasing, selling, mortgaging, or leasing real property.

Section 3.7. Action Without a Meeting. Any action required or permitted to be taken by the Directors may be taken without a meeting if all of the Directors sign a written consent setting forth the action so taken. A statement of the authorized action and the written consents thereto shall be filed with minutes of the proceedings of the Directors.

Section 3.8. Participation by Telephone. Any one or more Directors or members of any Committee may participate in a meeting of the Board of Directors or such Committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear one another at the same time. Participation by such means shall constitute presence in person at the meeting.

## ARTICLE IV

### Officers

Section 4.1. Officers. The Officers of the Corporation shall consist of an Executive Director, a Secretary and a Treasurer, and such other Officers as the Board of Directors from time to time shall deem appropriate. Any person may hold two or more offices, except that the offices of Executive Director and Secretary may not be held by the same person. Such Officers shall be appointed by the Board of Directors at its Annual Meeting, and/or whenever vacancies occur or the Board of Directors deems it appropriate to appoint an additional Officer, and shall serve at the pleasure of the Board of Directors.

Section 4.2. Executive Director. The Executive Director shall be the Chief Executive Officer, shall have the general powers and duties of supervision and management of the Corporation which usually pertain to such office, and shall perform all such other duties as are properly required by the Board of Directors.

Section 4.3. Secretary. The Secretary shall affix the corporate seal to and sign such instruments as require the seal and his or her signature and shall perform such other duties as usually pertain to such office and/or as are properly required by the Board of Directors and/or



the Executive Director. The Assistant Secretary or Secretaries, if any, shall perform the duties of the Secretary at the Secretary's request and in the Secretary's absence, and such other duties as may be assigned by the Executive Director or the Secretary.

Section 4.4. Treasurer. The Treasurer shall have the care and custody of all moneys and securities of the Corporation; shall deposit all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board of Directors may designate; shall cause to be entered in books of the Corporation to be kept for that purpose full and accurate accounts of all moneys received and paid on account of the Corporation; shall make and sign such reports, statements, and instruments as may be required by law or the Board of Directors; and shall perform such other duties as usually pertain to such office and/or as are properly required by the Board of Directors and/or the Executive Director. The Assistant Treasurer(s), if any, shall perform the duties of the Treasurer at the Treasurer's request and in the Treasurer's absence, and such other duties as may be assigned by the Executive Director or the Treasurer.

Section 4.5. Compensation. The Corporation may reimburse its Officers and employees for expenses incurred in the performance of their duties and may pay its Officers and employees compensation commensurate with their services. The amount of compensation paid to each Officer shall be fixed by action of the Board of Directors.

Section 4.6. Bonds. The Board of Directors may require any Officer, agent or employee of the Corporation to give a bond to the Corporation for the faithful performance of his or her duties, with one or more sureties and in such amount as may be satisfactory to the Board of Directors. The expense of such bond shall be borne by the Corporation.

## ARTICLE V

### Indemnification

Section 5.1. Right to Indemnification. To the maximum extent permitted by law, the Corporation shall indemnify each Director, Alternate Director or Officer (collectively, "indemnitees"), whether or not then in office, who is made or threatened to be made a party to any action, suit or proceeding, other than one by or in the right of the Corporation to procure a judgement in its favor, civil or criminal, arising out of such indemnitee's acts or omission to act,

in such indemnitee's capacity as such and within the scope of such capacity, against (a) the reasonable expenses, costs and counsel fees incurred by such indemnitee in the defense of such action, suit or proceeding or threatened action, suit or proceeding and (b) amounts paid or incurred pursuant to a judgment or in settlement of any such action, suit or proceeding or threatened action, suit or proceeding.

Section 5.2. Conditions. Such indemnification shall be conditioned upon (a) a finding made by the Board of Directors that the indemnitee acted in good faith for a purpose which the indemnitee reasonably believed to be in the best interests of the Corporation and that he or she had no reasonable cause to believe that his or her conduct was unlawful, (b) the indemnitee's delivery to the Corporation of written notice of the action, suit or proceeding within 15 days following receipt of notice thereof, and (c) unless defended by the Corporation or the City's Corporation Counsel, the indemnitee's retention of counsel satisfactory to the Corporation and the Corporation's determination that the defense and any settlement of such action, suit or proceeding, or threatened action, suit or proceeding, is satisfactory. For purpose of this section, unlawful conduct shall mean conduct that is violative of criminal law.

Section 5.3. Non-Exclusive. The foregoing right of indemnification shall not be exclusive of other rights to which any indemnitee may be entitled as a matter of law.

## ARTICLE VI

### Conflicts of Interest

Section 6.1. Private Gain. No Director, Alternate Director or Officer shall use his or her relationship with the Corporation for private gain.

Section 6.2. Disclosure. Whenever any matter arises with respect to which a Director, Alternate Director or Officer ("interested party") has a conflict of interest or has any question about the existence of a possible conflict, the interested party shall make full disclosure of such conflict or possible conflict before the matter in question is voted upon by the Board of Directors or the Members. Interested parties shall not vote on the matter.

The person having a conflict shall retire from the room in which the Board or Board Committee is meeting and shall not participate in the final deliberation or decision regarding the

matter under consideration. However, that person shall provide the Board or Committee with any and all relevant information.

The minutes of the meeting of the Board or Committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is a doubt as to whether a conflict of interest exists, the matter shall be resolved by a vote of the Board of Directors or Board Committee, excluding the person concerning whose situation the doubt has arisen.

Section 6.3. Definition. For purposes of this Section, a conflict of interest shall be defined as a Director, Alternate Director or officer or said person's immediate family who has a direct financial or fiduciary interest (which shall include, without limitation, an ownership, employment, contractual, creditor, or consultative relationship), or a Board or staff membership, in an entity or individual or a substantial affiliate of an entity or individual with respect to which a vote is to be taken (including any such interest that existed at any time during the twelve months preceding the time that the matter is voted upon), provided that employment with the City of New York shall not constitute a direct financial or fiduciary interest within the meaning of this section.

Section 6.4 Disclosure Statement. A conflict of interest disclosure statement shall be furnished annually to each director, officer who is presently serving this organization or who may hereafter become associated with it; the policy shall be reviewed annually; advised of the policy and furnished a disclosure statement upon undertaking the duties of such office.

## ARTICLE VII

### Miscellaneous

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall end on June 30<sup>th</sup>, unless otherwise provided by the Board of Directors.

Section 7.2. Corporate Seal. The seal of the Corporation shall be circular in form with the words "Animal Care and Control, Inc." in the outer circle and the words "Corporate Seal - 1994" in the inner circle. The seal on any corporate obligation for the payment of money may be facsimile, engraved or printed.



Section 7.3. Amendments. These By-laws may be added to, amended, altered or repealed (subject to the voting requirement set forth in Section 3.6) at any meeting of the Board of Directors, notice of which shall have referred to the proposed action.