

DONATION AGREEMENT

#613-PHD0507

with

COMIC RELIEF, INC.

regarding

**EL DORADO COUNTY SHELTER SERVICES FOR ABANDONED
ANIMALS FROM HURRICANE KATRINA**

THIS DONATION AGREEMENT (“Agreement”) is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and Comic Relief, Inc., a non-profit 501(c)(3) corporation, duly qualified to conduct business in California, whose principal place of business is 6404 Wilshire Blvd., Suite 960, Los Angeles, CA, 90048 (hereinafter referred to as “Comic Relief”).

WITNESSETH

WHEREAS, Comic Relief desires to establish a relationship with El Dorado County in conjunction with Comic Relief’s new initiative, Comic Relief WILD, which assists in the ongoing effort to foster animals abandoned during Hurricane Katrina and help support animal rescue operations in times of natural and man made disasters worldwide; and

WHEREAS, Comic Relief proposes to donate money to the County to further that relationship and support the goals of Comic Relief WILD; and

WHEREAS, Comic Relief proposes to arrange for the transport of cats and dogs from animal shelters in New Orleans (“Katrina Animals”) to the El Dorado County Animal Shelter located in Meyers, California (“SLT Shelter”); and

WHEREAS, County will house one Katrina Animal at a time and, in conjunction with Comic Relief, make every reasonable effort to find those Katrina Animals suitable homes; and

WHEREAS, Comic Relief’s efforts to find suitable homes for those Katrina Animals and to bring attention to the continuing plight of animals displaced by Hurricane Katrina may also benefit animals already housed at El Dorado County Animal Shelters, as the campaign may encourage the public to visit the SLT Shelter and view other animals housed there.

NOW, THEREFORE, County and Comic Relief mutually agree as follows:

ARTICLE I

Donation: Within thirty (30) days of the effective date of this Agreement, Comic Relief will donate to the County the sum of \$154,466.00 to be used by the County as follows: (1) To remodel the SLT Shelter in general accordance with Exhibit A hereto and (2) To construct office space in the existing garage adjacent to the SLT Shelter in general accordance with Exhibit B hereto (“the Premises”) and to a level of quality equivalent to or better than that of the office of the Supervisor of the SLT Shelter. The Premises shall be a minimum of 162 usable square feet. A more specific description of the improvements to be made to the Premises, which shall include the configuration of the Premises, the placement of doors and windows, and its position relative to the SLT Shelter, shall be provided to Comic Relief within sixty (60) days of the effective date of this Agreement. It is currently estimated that the amount necessary to construct office space in accordance with this Agreement is approximately \$12,000.00. The County shall reserve from the donation an amount sufficient to construct the improvements described in Exhibit B. As a condition of the donation, the County agrees to house one Katrina Animal at a time and to allow Comic Relief to use and occupy the Premises, in accordance with the terms of this Agreement.

The donation is to be submitted to:

El Dorado County Public Health Department
941 Spring Street, Suite 3
Placerville, CA 95667

ARTICLE II

Katrina Animals: As a condition of the aforementioned donation, the County hereby agrees to house no more than one Katrina Animal at any given time in accordance with the following:

- A. Only after a Katrina Animal has been placed in an appropriate home will another be transported to the SLT Shelter from New Orleans.
- B. All Katrina Animals shall be spayed or neutered, microchipped, and medically evaluated by a veterinarian prior to being transported to the SLT Shelter.
- C. Comic Relief shall obtain the approval of the SLT Shelter Supervisor prior to transporting any Katrina Animal to the SLT Shelter. The County shall not be responsible for any costs incurred in transporting a Katrina Animal to the SLT Shelter.
- D. The County shall inspect each Katrina Animal upon its arrival at the SLT Shelter and, in accordance with mutually agreed upon criteria developed pursuant to this Agreement, make a final determination as to whether to accept or reject any such animal. If the SLT Shelter Supervisor rejects a Katrina Animal, the Katrina Animal will be transported back to its shelter of origin at no cost to the County.
- E. The County, in conjunction with Comic Relief, shall utilize its regular resources toward the goal of finding an adoptive home for the Katrina Animals housed at the SLT Shelter. However, if a Katrina Animal is later deemed by the SLT Shelter Supervisor to be unadoptable, that animal

will be transported back to its shelter of origin at no cost to the County. Under no circumstances should a Katrina Animal be euthanized, unless Comic Relief agrees in writing that it is in the best interests of the animal.

- F. Comic Relief shall be responsible for all expenses associated with the medical care of the Katrina Animals incurred once the animal leaves New Orleans and prior to adoption of the animal, including expenses incurred during transit to the SLT Shelter.
- G. The County shall facilitate the adoption process for each Katrina Animal chosen for adoption, including the collection of all appropriate fees associated with that adoption, which fees shall be retained by the County. Since the Katrina Animals will have been spayed/neutered and microchipped prior to transport to the SLT Shelter, the person adopting the animal will be requested to donate the spay/neuter and microchipping fees directly to the animals shelter of origin.
- H. Comic Relief shall utilize its high-profile public image to interact with local and national media in order to assist with finding adoptive homes for the Katrina Animals, as well as to generally raise awareness of the continuing plight of animals displaced by Hurricane Katrina and help support animal rescue operations in times of natural and man-made disaster worldwide. To that end, Comic Relief shall notify the County about any press coverage of the SLT Shelter resulting from Comic Relief's media outreach efforts.
- I. Comic Relief shall obtain the prior written consent of the SLT Shelter Supervisor prior to conducting any events at the SLT Shelter.
- J. In accordance with the terms of this Agreement, the parties shall cooperate in good faith to develop the following policies and procedures related to the Katrina Animals:
 - (i) A mutually agreed upon process by which each Katrina Animal will be transported to the SLT Shelter from New Orleans.
 - (ii) A mutually agreed upon criteria regarding the condition of each Katrina Animal prior to transport. This criteria must be satisfied before the Katrina Animal will be transported to the SLT Shelter.
 - (iii) A mutually agreed upon process by which each Katrina Animal will be transported from the SLT Shelter to New Orleans in the event the Katrina Animal is determined to be unadoptable or unacceptable.
 - (iv) A mutually agreed upon process for Comic Relief to approve and pay for medical expenses incurred while the animal is housed at the SLT Shelter.
- K. Comic Relief and its agents shall comply with any applicable California requirements concerning the quarantine of transported animals.

ARTICLE III

Facility Use: As a further condition of the aforementioned donation, the County hereby agrees to

allow Comic Relief to use and occupy the Premises in accordance with the following provisions:

- A. **AUTHORIZED USERS:** Only one employee of Comic Relief, for which Comic Relief maintains full Worker's Compensation and Employers' Liability Insurance as required by California law, shall be permitted to regularly use and occupy the Premises, with the exceptions of those visiting the Premises for meetings and Comic Relief president Bob Zmuda, who occasionally will stop by and check up on the Comic Relief employee, for the duration of this Agreement. The Premises are only to be used in furtherance of the purposes of this Agreement, that is, to further Comic Relief's ongoing efforts to foster animals abandoned during Hurricane Katrina and to help support animal rescue operations in times of natural and man made disasters worldwide. Comic Relief's authorized employee shall be provided access to the SLT Shelter in order to use the SLT Shelter's restroom and break room and shall be provided with a designated parking space.
- B. **PROHIBITED USES:** Comic Relief shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:
- (i) Increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents;
 - (ii) Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises;
 - (ii) Obstruct or interfere with the rights of occupants of the SLT Shelter or injure or annoy them; or
 - (iv) Constitute commission of a waste on the Premises.
- C. **ALTERATIONS:** Comic Relief shall not make or permit any other person to make any alterations to the Premises without the written consent of the County first obtained. Should the County consent to the making of any alterations to the Premises by Comic Relief, subsequent to execution of this Agreement, said alterations shall be made at the sole cost and expense of Comic Relief by a contractor or other person selected by Comic Relief and approved in writing by the County before work commences. Any and all alterations, with the exception of relocatable walls and other alterations readily removable without significant damage to the Premises, interior or exterior, shall on expiration or sooner termination of this Agreement, become the property of the County and remain on the Premises.
- D. **MAINTENANCE AND REPAIRS:** Comic Relief shall, at all times during the term of this Agreement and any renewal or extension thereof, maintain, at its sole cost and expense, the interior of the Premises, in a good, clean, and safe condition, and shall on expiration or sooner termination of this Agreement surrender the Premises to the County in as good condition and repair as they are in upon delivery of the Premises to Comic Relief, reasonable wear and tear and damage by the elements excepted.

The County shall, at the County's own cost and expense, maintain the exterior walls, exterior windows, automobile parking areas, exterior lighting, sidewalks, retaining walls, ramps,

plumbing, electrical, heating and air conditioning, landscaped areas, air conditioning and heating equipment and ductwork, and roof and structural supports of the Premises, in good order and repair, excepting any repairs caused by the negligent or willful act of Comic Relief or Comic Relief's agents or servants.

- E. INSPECTION: Upon 24-hour written notice by the County, Comic Relief shall permit the County to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Comic Relief is complying with the terms of this Agreement and for the purpose of doing other lawful acts that may be necessary to protect the County's interest in the Premises under this Agreement.
- F. TAXES AND ASSESSMENTS: Comic Relief shall pay before delinquency all taxes, assessments, license fees, and other charges, , excluding property taxes, specifically including, but not limited to, possessory interest taxes that are levied or assessed against Comic Relief's personal property installed or located in or on the Premises or on Comic Relief's interest in the Premises that become payable during the Term of this Agreement.

Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Comic Relief acknowledges that its interest in Premises which is created by this Agreement may be subject to a possessory interest tax.

G. UTILITIES:

- (i) Water and sewer suitable for the intended use of the Premises shall be provided and paid by the County.
- (ii) Gas and/or electric utilities shall be obtained and paid by the County.
- (iii) Janitorial services including the cleaning of windows and replacement of light globes or fluorescent tubes shall be paid by Comic Relief.
- (iv) Garbage removal shall be provided and paid for by the County.
- (v) Comic Relief shall obtain and pay for telephone and/or internet service.

H. DESTRUCTION OF PREMISES: Should the Premises be damaged or destroyed by any cause not the fault of Comic Relief, the County shall at its sole cost and expense promptly repair the same. In such an event, the term of this Agreement shall be extended by the amount of time that the Premises are unavailable to Comic Relief.

I. ASSIGNMENT OR SUBLEASING: Comic Relief shall not sub-lease, encumber, assign, or otherwise transfer its rights or interests under this Agreement, without the express written consent of the County first had and received, provided said consent by the County shall not be unreasonably withheld.

J. Upon issuance of a Certificate of Occupancy for the Premises, which is tentatively scheduled to occur by November 2007, Comic Relief shall be permitted to occupy the Premises. The Premises are to be provided to Comic Relief to use in accordance with this Agreement without

the necessity of the payment of rent or a security deposit.

ARTICLE IV

Term: This Agreement shall be effective when signed by both parties hereto and shall expire four years from the issuance of a Certificate of Occupancy for the Premises unless extended pursuant to the provisions of Article III(H) or unless earlier terminated pursuant to the provisions under Article VII herein.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Liability: Comic Relief is, and shall be at all times, deemed independent and shall be wholly responsible for its own actions in furtherance of the purposes of this Agreement. Comic Relief exclusively assumes responsibility for all acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to its performance under this Agreement during the course and scope of their employment.

Comic Relief shall act in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which such performance is to be done and shall, therefore, not be charged with responsibility of preventing risk to Comic Relief or its employees.

ARTICLE VII

Default, Termination, and Cancellation:

A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Comic Relief.

C. Ceasing Performance: County may terminate this Agreement in the event Comic Relief ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

ARTICLE VIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

EL DORADO COUNTY PUBLIC HEALTH DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: GAYLE ERBE-HAMLIN, DIRECTOR

or to such other location as the County directs.

Notices to Comic Relief shall be addressed as follows:

COMIC RELIEF, INC.
6404 WILSHIRE BLVD, SUITE 960
LOS ANGELES, CA 90048
ATTN: _____

or to such other location as the Comic Relief directs.

ARTICLE IX

Indemnity: To the fullest extent of the law, Comic Relief shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Comic Relief's use of the Premises or its operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, except for the sole or active negligence of the County, its officers and employees, or as expressly provided by statute. This duty of Comic Relief to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

To the fullest extent of the law, the County shall defend, indemnify, and hold Comic Relief harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of injuries to or death of any person, excluding Comic Relief employees acting pursuant to this Agreement, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the County's use of the SLT Shelter or its operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of Comic Relief, except for the sole or active negligence of Comic Relief, its officers and employees, or as expressly provided by statute. This duty of the County to indemnify

and save Comic Relief harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE X

Insurance: Comic Relief shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Comic Relief maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Comic Relief as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Comic Relief in the performance of the Agreement.
- D. Comic Relief shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- F. Comic Relief agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Comic Relief agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the Risk Management Division and Comic Relief agrees that no work or services shall be performed prior to the giving of such approval. In the event Comic Relief fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.
- H. Comic Relief's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by

the County, its officers, officials, employees or volunteers shall be in excess of Comic Relief's insurance and shall not contribute with it.

- I. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or Comic Relief shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- K. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- L. **Comic Relief's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.**
- M. In the event Comic Relief cannot provide an occurrence policy, Comic Relief shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following the expiration of the term of this Agreement.
- N. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with the Risk Management Division, as essential for protection of the County.

ARTICLE XI

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Comic Relief under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XII

Venue: Any action arising out of this Agreement shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Gayle Erbe-Hamlin, Director of Public Health, or successor.

ARTICLE XIV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XV

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XVI

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

COMIC RELIEF, INC.

By: Bob Zimm
President, Title
Comic Relief, Inc.

Date: June 6, 2007

By: Joseph E. Sciacca, Ph.D.
CFO, Title
Comic Relief, Inc.

Date: June 6, 2007

COUNTY OF EL DORADO

By: Helen K. Baumann
Helen K. Baumann, Chair
El Dorado County Board of Supervisors

Date: 6/5/07

ATTEST:
Cindy Keck, Clerk

By: Cindy Keck
Deputy Clerk

Date: 6/5/07

EXHIBIT A

The proposed changes to the facility offered by Comic Relief would provide the following:

1. The raised dog kennel area would be removed and replaced with a new kennel area that is at the same level as the major part of the building. This will provide more efficient maintenance and clean out by County staff and vastly improved public access to view the dogs and allow for required ADA access. Adoptable dogs will now be able to be separated from stray dogs.
2. An improved kennel floor drain system is to be installed that provides for an easier and more sanitary clean out of the kennels and keeps it out of view and away from public areas.
3. New manufactured kennel dividers and gates are to be installed that are much more attractive in appearance than the existing chain link fencing and concrete walls. Due to the reduced thickness of the walls extra kennels will be provided within the same space.
4. Acoustical materials are to be provided and installed above the kennel area to reduce the noise caused by the barking of dogs.

EXHIBIT B

In order to accommodate Comic Relief's office use needs, a portion of the existing garage adjacent to the SLT Shelter will be remodeled generally as follows:

One stall, or portion of one stall, is to be converted into office space to allow a member of the Comic Relief staff to work and monitor the animals. This office area will be provided with finished walls, a window, lighting, electrical, telephone/internet access, and heating. A separate entrance, with signage, is to be provided. Restroom and break room access is to be provided within the primary Animal Shelter building.