

RESOLUTION NO. 2016 - 343

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN ST. JOHNS COUNTY AND S.A.F.E. PET RESCUE, INC. TO RECOGNIZE CERTAIN S.A.F.E. PET RESCUE, INC. FACILITIES IN ST. JOHNS COUNTY AS NEIGHBORHOOD PUBLIC SERVICES AND TO MITIGATE THE IMPACT, INTENSITY, SCALE, AND COMPATIBILITY OF THE FACILITIES.**

**WHEREAS**, the St. Johns County Board of County Commissioners has determined that it is in the interest of the public's health, welfare, and well-being to promote humane and responsible animal ownership; and

**WHEREAS**, the St. Johns County Board of County Commissioners ratifies and reaffirms the importance of adhering to and enforcing its land development regulations, including but not limited to the St. Johns County Land Development Code; and

**WHEREAS**, S.A.F.E. Pet Rescue, Inc. (SAFE) is a Florida not-for-profit corporation that, among other things, cares for pets unable to be housed indefinitely at other locations; and

**WHEREAS**, SAFE currently operates a facility on property located at 6101 A1A South, St. Augustine, Florida 32080 that falls within the Commercial, Neighborhood zoning district and a facility on property located at 1250 County Road A1A South, St. Augustine, Florida 32080 that falls within the Commercial, General zoning district (collectively, Facilities); and

**WHEREAS**, pursuant to the St. Johns County Land Development Code, the use of property within the Commercial, Neighborhood and Commercial, General zoning districts for a kennel or other animal boarding facility is not allowed by right or special use permit; and

**WHEREAS**, Neighborhood Public Service uses are allowed in all zoning districts; and

**WHEREAS**, the Facilities, when mitigated by terms relating to the safety of the public and animals and to the Facilities' impact, intensity, scale, and compatibility, is recognized as a use allowed within the Neighborhood Public Service use category; and

**WHEREAS**, the County and SAFE wish to enter into a Memorandum of Understanding in order to recognize and reasonably allow the public service SAFE provides at the Facilities to the surrounding neighborhood; and

**WHEREAS**, the County has determined that entering into the Memorandum of Understanding serves a public purpose.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, THAT:**

1. The above recitals are hereby adopted as findings of fact.

2. The County Administrator, or designee, is hereby authorized to execute the Memorandum of Understanding on behalf of the County for the purposes mentioned above.
3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of Board of County Commissioners of St. Johns County, Florida this 15 day of November 2016.

ATTEST: HUNTER S. CONRAD, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By: *Pam Halterm*  
Deputy Clerk

By: *J.S. Smith*  
Jeb S. Smith, Chair

Rendition Date: 11/17/16

Effective Date: 11/15/16



**MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING (MOU)** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between **S.A.F.E. Pet Rescue, Inc.**, a Florida not-for-profit corporation (SAFE) and **St. Johns County, Florida**, a political subdivision of the State of Florida (the County).

**RECITALS**

**WHEREAS**, the St. Johns County Board of County Commissioners has determined that it is in the interest of the public's health, welfare, and well-being to promote humane and responsible animal ownership; and

**WHEREAS**, the St. Johns County Board of County Commissioners ratifies and reaffirms the importance of adhering to and enforcing its land development regulations, including but not limited to the St. Johns County Land Development Code; and

**WHEREAS**, SAFE is a Florida not-for-profit corporation that, among other things, cares for pets unable to be housed indefinitely at other locations; and

**WHEREAS**, SAFE currently operates a facility on property located at 6101 A1A South, St. Augustine, Florida 32080 that falls within the Commercial, Neighborhood zoning district and a facility on property located at 1250 County Road A1A South, St. Augustine, Florida 32080 that falls within the Commercial, General zoning district (collectively, Facilities); and

**WHEREAS**, pursuant to the St. Johns County Land Development Code, the use of property within the Commercial, Neighborhood and Commercial, General zoning districts for a kennel or other animal boarding facility is not allowed by right or special use permit; and

**WHEREAS**, Neighborhood Public Service uses are allowed in all zoning districts; and

**WHEREAS**, the Facilities, when mitigated by terms relating to the safety of the public and animals and to the Facilities' impact, intensity, scale, and compatibility, is recognized as a use allowed within the Neighborhood Public Service use category; and

**WHEREAS**, the County and SAFE wish to enter into this MOU in order to recognize and reasonably allow the public service SAFE provides at the Facilities to the surrounding neighborhood; and

**WHEREAS**, the County has determined that entering into this MOU serves a public purpose.

**NOW THEREFORE**, in consideration of the mutual promises set forth in this MOU, SAFE and the County agree as follows:

- 1. INCORPORATION OF RECITALS.** The above recitals are incorporated into the body of this MOU and are adopted as findings of fact.

2. **TERM.** The term of this MOU shall be for three years from the date this MOU is executed by both parties. This MOU may be renewed, at the County's option, for three additional one-year terms.

3. **NEIGHBORHOOD PUBLIC SERVICE.**

The County and SAFE agree to recognize the Facilities only, and not any other property or facility, whether owned, operated, affiliated, or associated with or by SAFE or any other individual or entity, as uses allowable in the Neighborhood Public Service designation pursuant to Land Development Code Section 2.02.01.O, subject to and mitigated by the following conditions:

(a) At no time shall SAFE keep or house more than a total of twenty-five (25) dogs at the Facility located at 1250 County Road A1A South, St. Augustine, Florida 32080, and a total of fifty (50) dogs at the Facility located at 6101 A1A South, St. Augustine, Florida 32080.

(b) When placing animals in the Facilities, SAFE shall give first priority to animals housed at the time at the St. Johns County Animal Shelter. SAFE shall promptly disclose to the St. Johns County Division of Animal Control (Division) the name, breed, color, size, and weight of any animal obtained from any other source that has been deemed dangerous or aggressive by any jurisdiction, as well as the jurisdiction by which the animal has been deemed dangerous or aggressive.

(c) SAFE shall disclose the fact that an animal has been deemed dangerous or aggressive by any jurisdiction to any person adopting such an animal from the Facilities.

(d) If any animal at either Facility is alleged to have been involved in an incident that would give rise to an aggressive or dangerous animal investigation under the St. Johns County Animal Code, Ordinance No. 2015-68, as amended from time to time (Animal Code), SAFE shall cooperate fully with the Division's investigation, including but not limited to making SAFE staff and volunteers available to the Division to obtain witness statements, allowing the Division access to the animal for purposes of the investigation, and, as provided for in the Animal Code, surrendering the animal to the Division at the Division's request.

(e) SAFE shall ensure that any person who adopts an animal from the Facilities is a responsible and suitable owner. SAFE shall not permit any person to adopt an animal if the adoption would not be in the best interests of the health, welfare, or well-being of the animal or the public.

(f) SAFE shall require any person adopting an animal from the Facilities to sign a document agreeing to have the animal sterilized and vaccinated for rabies as a condition of adoption.

(g) SAFE shall ensure that all animals housed at the Facilities have access to sufficient wholesome food, sufficient potable water, proper shelter, sufficient exercise, wholesome exchange of air, and such veterinary care as is needed to prevent unnecessary pain and suffering.

(h) SAFE shall ensure that all animal enclosures at the Facilities are maintained in good repair and are kept in a sanitary condition. Animal enclosures shall be cleared of animal excretions and food waste as necessary and in no event less than once per day.

(i) SAFE shall take steps to soundproof the Facilities in order to minimize the Facilities' impact on surrounding properties.

(j) SAFE shall maintain all records required by Section 823.15, Florida Statutes, and shall provide copies of such records to the Division upon request.

(k) SAFE shall permit the Division to inspect either Facility at any time, with reasonable notice, in order to ensure compliance with these conditions.

#### 4. INSURANCE.

SAFE shall obtain all insurance required under this section and shall furnish proof of insurance to the County. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificate(s) shall clearly indicate SAFE has obtained insurance of the type, amount, and classification as required by this MOU and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically include the County as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve SAFE of its liability and obligations under this MOU.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

SAFE shall maintain during the life of this MOU, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect SAFE from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this MOU, whether such operations be by SAFE or by anyone directly employed by or contracting with SAFE.

SAFE shall maintain during the life of this MOU, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000, if applicable.

SAFE shall maintain during the life of this MOU, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect SAFE from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by SAFE or by anyone directly or indirectly employed by SAFE.

SAFE shall maintain during the life of this MOU, adequate Workers' Compensation Insurance in at least such amounts as required by Florida law.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

#### 5. INDEMNIFICATION.

SAFE shall indemnify, defend, and hold the County and its officers, employees, agents, subdivisions, departments, divisions, and agencies harmless from any and all damages, claims, losses, and reasonable costs (including attorneys' fees and all costs associated with litigation, whether or not such costs are taxable as attorneys' fees) associated with this MOU.

6. **NOTICE OF DEFAULT AND RIGHT TO CURE.** Should either party default under the terms of this MOU, the non-defaulting party shall provide written notice to the defaulting party, which notice shall include a timeframe of no fewer than fourteen (14) calendar days in which to cure the default. In the event the defaulting party fails to cure the default within the timeframe provided in the original notice of default (or any such other amount of time mutually agreed to by the parties in writing), the non-defaulting party may exercise any or all of its administrative or legal remedies.

7. **TERMINATION.** The County may terminate this MOU without further notice if SAFE defaults and does not timely cure the default upon receiving written notice from the County as provided in Section 6. This MOU shall automatically terminate if SAFE ceases operation of either Facility for the purpose of rescuing and adopting animals.

8. **MISCELLANEOUS.**

(a) **Governing Law and Venue.** This MOU is to be governed by and interpreted in accordance with the laws of the State of Florida. Venue for any action pertaining to this MOU shall be in St. Johns County.

(b) **Entire Agreement.** This MOU constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this MOU except those fully expressed herein and each party agrees that it has not relied on and is not entitled to rely on any statements, promises or representations other than those set forth herein in entering into this Agreement. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

(c) **Assignment.** Neither the County nor SAFE shall assign the duties and responsibilities outlined in this MOU without the written consent of the other.

(d) **Waiver.** Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision of this Agreement. Any waiver must be in writing and signed by the party against whom the waiver is sought.

(e) **Severability.** If any word, phrase, sentence, part, subsection, section, or other portion of this MOU, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this MOU, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect, provided that the removal of the voided portion shall not deprive either party of the benefit of its bargain.

(f) **Notices.** All notices pertaining to this MOU shall be delivered either by hand or by certified mail, return receipt requested, to:

SAFE:

Robin Kantner Nordan  
5489 2nd Street  
St. Augustine, FL 32080

With copy to: David D. Naples, Jr.  
In-House Counsel for SAFE  
Pycraft Law, LLC  
2825 Lewis Speedway, Suite 107  
St. Augustine, FL 32084

COUNTY: Paul Studivant  
St. Johns County Animal Control  
130 N. Stratton Road  
St. Augustine, FL 32095

With copy to: St. Johns County  
Office of the County Attorney  
500 San Sebastian View  
St. Augustine, FL 32804

All other correspondence, not classified as notices, may be delivered, disseminated, and/or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing, or text messaging.

(l) **Relationship of the Parties.** The parties agree that this MOU does not and shall not be construed as or constitute an agency, partnership, joint venture, or other fiduciary or confidential relationship between SAFE and the County.

(m) **Counterparts.** This MOU may be executed in any number of counterparts, including facsimile, and each counterpart shall be deemed an original.

(n) **Exhibits.** The parties agree that all Exhibits to this MOU are hereby incorporated into and shall form an integral part of this Agreement.

(o) **No Third-Party Beneficiaries.** Both the County and SAFE explicitly agree that nothing in this MOU shall be construed to create any third party beneficiary status to any person or entity. The parties further explicitly agree that this MOU applies only to the Facilities and not to any other property or facility, whether owned, operated, affiliated, or associated with or by SAFE or any other individual or entity.

(p) **Access to Records.** The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this MOU shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

(q) **Authority to Execute.** Each party to this MOU covenants to the other party that it has the lawful authority to enter into this MOU and that it has authorized the execution of this MOU by the representative noted below.

IN WITNESS WHEREOF, each of the parties hereto has executed this MOU as of the date and year first above written.

**ST. JOHNS COUNTY, FLORIDA,**  
a political subdivision of the State of Florida

**S.A.F.E. PET RESCUE, INC.**  
A Florida not-for-profit-corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Robin Kentner  
Name: Robin Kentner  
Title: President

ATTEST: Hunter S. Conrad, Clerk

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