

AFFILIATION AGREEMENT

AFFILIATION AGREEMENT (the "Agreement") dated as of the 11th day of November, 2009 by and among Animal Rescue League of New Hampshire, a not-for-profit voluntary corporation organized under the laws of the State of New Hampshire and having a principal place of business at 545 Route 101, Bedford, New Hampshire (hereinafter "ARL") and Conway Area Humane Society, a not-for-profit voluntary corporation organized under the laws of the State of New Hampshire and having a place of business at 223 East Main Street, Conway, New Hampshire (hereinafter "Conway").

WITNESSETH

WHEREAS, the ARL and Conway share a mission to promote animal welfare and save the lives of adoptable homeless companion animals;

WHEREAS, the ARL and Conway have determined that certain efficiencies may be gained through collaboration;

WHEREAS, Conway has determined that the organization's mission and the community it serves will benefit from leveraging the experience and resources available at the ARL;

WHEREAS, the parties desire to establish a sustainable relationship with each other for the purposes of integrating and improving the coordination and delivery of animal rescue and adoption services to the residents in the State of New Hampshire (the "Affiliation").

WHEREAS, the parties have determined that Conway's participation in ARL's system while retaining its separate identity may optimize the benefits obtainable from the Affiliation;

WHEREAS, the Affiliation consists of and will be effectuated by means of (i) certain amendments to the parties' Articles of Agreement and Bylaws (their "Organizational Documents"); and (ii) certain contractual commitments by the parties as more particularly set forth below; and

WHEREAS, the parties wish to set forth in writing the specific nature and terms of their Affiliation;

NOW, THEREFORE, in consideration of the foregoing the parties agree as follows:

1. Definitions:

a. "Supermajority Vote": a two-thirds vote of a party's board of directors present and voting on an issue where a quorum is present;

b. “Review”: a matter is required to be brought to the attention of a party’s board of directors, but no action thereon is required to be taken;

c. “Disapproval”: the right of one party to reject a proposed action by the other party. The failure by a party having the right of Disapproval to Disapprove of a proposed action within thirty (30) days of written notice of such proposed action shall constitute an Approval of such proposed action. A party having a right of Disapproval shall not have a right to substitute its own action for the Disapproved action of the other party.

d. “Approval”: the express approval by one party of the other party’s proposed action or, where the right of Disapproval exists, the failure to timely Disapprove.

2. Effective Date of Affiliation. The Effective Date of the Affiliation shall be 30 days from the date hereof or such other date as is certified in writing by the ARL Chief Executive Officer and the Conway President (the “Effective Date”).

3. Mutual Representations and Warranties. Execution of this Agreement constitutes the representation and warranty of each party that each of the following is true and will continue to be true as of the Effective Date.

a. Organization and Standing. The party has been duly organized under the laws of the State of New Hampshire as a voluntary corporation and is in good standing under those laws.

b. Corporate Action. The party has taken all necessary corporate action and has secured all necessary licenses, permits and approvals in order to perform or satisfy any undertaking herein contained.

c. Authorization. The party has full and complete right, power and authority to execute this Agreement and to carry out the Affiliation subject to the conditions stated herein. This Agreement constitutes a legal, valid and binding obligation of the party in accordance with its terms.

d. Restrictions. No provision of the party's Organizational Documents, no contract or agreement by which the party is obligated and no provision of law has been or will be violated by the execution by the party of this Agreement or the performance or satisfaction of any undertaking herein contained.

e. Tax Status. The party is qualified as a tax-exempt 501 (c)(3) corporation pursuant to the Internal Revenue Code of 1986, as amended, and the Affiliation shall not adversely affect such status.

f. Investigation. The party has had a full opportunity to complete its due diligence review of the business, organization and affairs of the other party and is satisfied with the results thereof.

4. Amendments to ARL's Organizational Documents. As of the Effective Date, the ARL Organizational Documents will be amended to reflect the terms of the Affiliation provided for in this Agreement (the "ARL Amendments").

5. Amendments to Conway's Organizational Documents. As of the Effective Date, the Conway Organizational Documents will be amended to reflect a change of Conway's name to *Animal Rescue League of New Hampshire – North* and the terms of the Affiliation provided for in this Agreement (the "Conway Amendments").

6. ARL as Sole Voting Member. As of the Effective Date, ARL will become the sole voting member of Conway.

7. Conway Representation on ARL Board of Directors.

a. Conway shall have at least one (1) representative on the ARL Board of Directors, a number which may be increased, but not reduced, from time to time, by the ARL Board. The procedure for the election of any such Conway representative(s) and the election of their successors shall be as follows:

1) A candidate for a vacant position shall be proposed by the Conway Board to the ARL Nominating Committee.

2) In the event that the ARL Nominating Committee fails to nominate such person to fill the vacancy on the ARL Board, the Conway Board may either propose a new candidate for the position or insist that the ARL Board vote on Conway's candidate.

3) In the event that the ARL Board fails to elect a candidate proposed by Conway, Conway may repeat the foregoing process until one of its candidates is elected.

b. All Conway representatives on the ARL board must be members of the Conway Board and shall cease to be members of the ARL Board at the earlier of such time as they cease to be members of the Conway Board or their term of office on the ARL Board expires or is otherwise terminated in accordance with the ARL Bylaws.

b. The initial Conway representatives on the ARL Board shall be Anita Burroughs and Les Schoof.

8. Conway Board.

a. As the sole voting Member of Conway, ARL (acting through its Board) shall be involved in the selection of persons to the Conway Board who are eligible under Conway's Organizational Documents to serve as the elected, voting members of its board, according to the following process:

(1) candidates for any vacancy or new position on the Conway Board shall be proposed by the Conway Board to the ARL Board;

(2) the ARL Board shall have the right to Disapprove of candidates for Conway Board seats;

(3) if the ARL Board Disapproves of a candidate presented for a Conway Board seat, the Conway Board may seat the candidate only by a unanimous vote of all voting members of the Conway Board (except the candidate if he/she is then a sitting member of the Conway Board). If such a candidate is not so confirmed by the Conway Board a second candidate (or a third or subsequent candidate, if necessary) may be proposed by the Conway Board until one of its candidates has been Approved by the ARL Board.

b. The ARL Chief Executive Officer and one other ARL Board member (to be designated from time to time by the ARL Board) shall be ex officio members of the Conway Board, with vote at all times.

c. The initial members of the Conway Board as of the Effective Date shall be: Caroline Boyd (the ARL Chief Executive Officer), Sheila Steele (an ARL Board member) and at least three members of the existing Conway Board to be selected by the ARL Board before the Effective Date.

d. The Conway Executive Director (initially Virginia Moore) and, at the option of the Conway Board, one other management level employee of Conway selected by the Conway Board, shall be ex officio, non-voting member(s) of the Conway Board.

9. Management of Conway.

a. At the option of the ARL Board and for so long as it deems appropriate, the Chief Executive Officer of ARL shall be the Executive Director of Conway.

b. If and when the ARL Board chooses not to have its Chief Executive Officer be Conway's Executive Director, the person to fill the position shall be selected by the Conway Board, subject, however, to Disapproval of the candidate by the ARL Chief Executive Officer.

c. So long as the ARL Chief Executive Officer is not the Conway Executive Director, the person occupying the position may be removed from office by a Supermajority Vote of the Conway Board, subject, however, to Disapproval by the ARL Chief Executive Officer.

10. Powers Reserved to ARL. As reflected in the Conway Amendments, after the Effective Date, the power of the Conway Board of Directors to take the following actions shall be subject to Disapproval by the ARL Board by a Supermajority Vote.

a. the adoption of or any material change to Conway's annual operating and capital budgets;

b. any capital expenditure not included in the Conway capital budget;

c. the sale or other transfer of any real or personal property of Conway having a fair market value in excess of \$5,000 or such higher threshold as may be determined, from time to time, by ARL;

d. the lease of any real or personal property to or by Conway for a period exceeding one (1) year or such longer threshold as may be determined, from time to time, by ARL;

e. any corporate merger, consolidation, dissolution or the sale or transfer of all or substantially all Conway's assets or an affiliation in which Conway takes a controlling interest in another organization whether by stock ownership, membership or otherwise;

f. the incurrence of new indebtedness payable (a) in more than the normal twelve month operating cycle or (b) in excess of \$5,000 or such higher threshold as may be determined, from time to time, by ARL;

g. any significant addition to or deletion from or changes in a major service offered by Conway which would have a materially adverse effect upon Conway's operating budget;

h. any change in Conway's fiscal year or its material accounting practices;

i. the adoption of or any change to a Conway strategic plan, marketing plan or major fund-raising project; or

j. any amendment to Conway's Articles of Agreement or Bylaws.

11. Restrictions on ARL Powers as Sole Voting Member Of Conway. Notwithstanding any other provision of this Agreement, after the Effective Date, ARL shall not

have the power to take any of the following actions concerning the affairs of Conway without the consent of the Conway Board:

- a. to assess Conway with any charge or fee, except for reasonable fees for services rendered or property transferred;
- b. to appropriate to ARL's use any of Conway's endowment funds, reserves or fund balances;
- c. to remove members of the Conway Board from office except for cause;
- d. to amend Conway's Articles of Agreement or Bylaws; or
- e. to effect Conway's corporate dissolution.

12. Conflict Resolution. Either party may at any time demand that an issue between the parties be submitted to an ad hoc joint conference committee composed of the ARL Chief Executive Officer and the Conway Executive Director plus two (2) ARL Board members and two (2) Conway Board members. The ad hoc committee shall take no votes, but shall meet to discuss the issue dividing the parties in an effort to reach a consensus thereon and, if appropriate, to make recommendations to the Conway and/or ARL Boards.

13. Withdrawal from Affiliation. Upon a Supermajority Vote of its Board, ARL may unilaterally and without cause withdraw from the Affiliation upon a minimum of one hundred twenty (120) days written notice to Conway. Upon ARL's withdrawal from the Affiliation, the Conway Organizational Documents shall be amended to delete the Conway Amendments, the ARL Organizational Documents shall be amended to delete the ARL Amendments, ARL shall be removed as the sole voting member of Conway and the Conway representatives shall be removed from the ARL Board.

14. Potential Merger. At any time after two (2) years from the Effective Date (the "Option Period"), ARL shall have the option, exercisable in its sole discretion, and subject to securing all necessary regulatory and other approvals, to effect a merger of the two organizations in which Conway would be merged into ARL and ARL would be the sole surviving legal entity. In such event, Conway agrees to consent to such and to take all necessary and appropriate actions to accomplish the merger. Notwithstanding the aforesaid, the parties may at any time effect a merger by mutual consent.

15. Further Conduct of the Investigation. Either party may, prior to the Effective Date, make or cause to be made such additional investigation of the business and properties of the other party and its financial and legal condition as the inquiring party deems necessary or advisable to familiarize itself with such business, properties and other matters. The other party will permit the inquiring party and its authorized representatives, including, without limitation, legal counsel and accountants, to have, after the date hereof until the Effective Date, full access to the location and the books and records of the party at all reasonable times, and will furnish the

inquiring party with such financial and operating data and other information with respect to the business and properties of the party as the inquiring party shall from time to time reasonably request.

16. Resolutions of Conway and ARL. The Board of Conway and the Board of ARL shall approve, at duly constituted and noticed meetings, this Agreement and all actions necessary to be taken hereunder.

17. Assignment. Without the prior written consent of the other party and except as set forth herein, no rights or obligations of either party under this Agreement may be assigned or transferred to a third party.

18. Integration: Successors. This Agreement binds the parties' successors in interest and merges herein all prior understandings, discussions and negotiations of the parties with respect to the subject matter hereof.

19. New Hampshire Law Governs. This Agreement shall be construed under and governed by New Hampshire law.

20. Notices. Whenever in this Agreement reference is made to delivery of a notice to a party, such notice shall be in writing and delivered either by personal service or by United States mail, first class postage prepaid, return receipt requested, to both the ARL Chief Executive Officer and the Chair of the Board of the affected party.

21. Construction. To the extent that any of the provisions of the ARL or Conway Amendments are more specific than their counterpart provisions in this Agreement, the language of the Amendments shall govern. Notwithstanding the foregoing, to the extent any rights or obligations of the parties set forth herein are not addressed in the Amendments, such rights and obligations shall be governed by the terms of this Agreement.

22. Third Parties. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereto and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement.

23. No Assumption of Debts. Neither party is agreeing to assume the debts, liabilities, or other obligations of the other party by virtue of entering this Agreement.

24. Costs. Each party shall pay all costs and expenses incurred or to be incurred by such party in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

25. Counterparts. This Agreement may be executed by the parties hereto in any number of counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

26. Confidentiality and Media Publicity. In the event that the transaction contemplated herein is not completed, all documents received by each party shall be returned to the other and neither party shall disclose any of the information provided by the other to any third party or use it to any competitive advantage. The parties may issue press releases and other public statements concerning the Affiliation (“Media Publicity”), but the timing, content and context of such Media Publicity must be agreed upon by the parties as represented by the ARL Chief Executive Officer and the Conway Executive Director. It is agreed that the ARL Chief Executive Officer and the Conway Executive Director shall serve as chief spokespersons, unless and until otherwise agreed by the parties. Nothing herein shall prohibit either party from making any disclosure which, in the opinion of counsel to the party, is required by law.

27. Authority. This Agreement has been approved by the parties' respective Boards of Directors.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**ANIMAL RESCUE LEAGUE OF
NEW HAMPSHIRE**

By: _____
Lucy Gobin, Its
Duly Authorized Chair

By: _____
Caroline Boyd, Its
Duly Authorized CEO

CONWAY AREA HUMANE SOCIETY

By: _____
Andrew Orsini, Its
Duly Authorized President

Signatures on file