

CITY OF KINGSPORT, TENNESSEE

AND

PETWORKS ANIMAL SERVICES, INC.

OPERATIONAL AGREEMENT

THIS AGREEMENT made and entered into as of this 1st day of July, 2023, by and between the City of Kingsport, hereinafter called "CITY", and the PETWORKS Animal Services, Inc., hereinafter called "CENTER".

WITNESSETH:

WHEREAS, CENTER desires to enter into an Agreement with CITY whereby CENTER will, subject to the terms and conditions of this Agreement, provide animal control and animal shelter services; and,

WHEREAS, CITY by and through its duly elected officials and officers, desires to provide for an animal control program and shelter for CITY and its residents; and

WHEREAS, CENTER will provide certain animal control and shelter services for the City of Kingsport and its residents; and,

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

SECTION 1. PURPOSE OF THE AGREEMENT. The purpose of this Agreement is to provide an Animal Control/Shelter Program for CITY and to state the terms and conditions upon which financial assistance will be provided by CITY and the manner in which the project will be carried out by CENTER.

SECTION 2. DESCRIPTION OF THE PROJECT. CENTER agrees as follows:

- a) Provide shelter, food, and housing for lost, stray and unwanted animals. It is the intention and understanding of the parties that CENTER will continue the operation of the Animal Control/Shelter Program as it exists in the City of Kingsport as of the date of this Agreement, except as altered or amended by this Agreement. In no event will the quality or quantity of services be decreased except by express written consent of CITY and agreed upon by CENTER.

- b) Endeavor to answer all calls for service within the corporate limits, but not required to

maintain a dedicated dispatch employee. CENTER shall have a message on their answering machine that directs callers to leave a message or dial 911 in case of an emergency. Missed calls are expected to be returned the next business day at the latest.

- c) Maintain regular posted hours of operation at its premises, on its website and on all social media platforms operated, such hours being open to the public at a minimum of four (4) hours, five days per week, either morning or afternoon at the discretion of CENTER. CENTER will have the option to close the facility on the following holidays: Thanksgiving Day, Christmas Day, New Years Day, Good Friday, Easter, Memorial Day, the Fourth of July and Labor Day. The facility may also be closed due to bad weather, power outages, public health emergencies, or other unusual occurrences. Notice of all unscheduled closings should be provided to the CITY prior to closing of the facility.
- d) Provide and be responsible for, all personnel, including a manager for the animal shelter and animal adoption program, and to assist in CITY'S animal control program. Staff shall be kept at a rate consistent with budgeted positions. Vacant positions shall be filled in a timely manner to eliminate any gap in service. The Manager will be an employee of CENTER and will not for any purpose be considered to be an employee of CITY. The salary of the Manager will be paid by CENTER. The Manager will be responsible for the day-to-day operation and maintenance of the animal shelter and animal control program and will be responsible for the efficient and appropriate operation of these programs. In the event the Manager does not adequately provide for the efficient and appropriate operation of these programs, CITY may, at its option, require that the Manager be replaced, or CITY may require other reasonable steps be taken to remedy the situation. Failure of CENTER to take appropriate steps as requested by CITY in such event will constitute grounds for termination of this Agreement. All staff shall be appropriately trained on the day-to-day operations of the CENTER as well as all laws that relate to the CENTER.
- e) Keep the facility safe, secure, clean, and orderly at all times, including both the building and grounds.
- f) Admit animals to the facility on a daily basis, except on those holidays and occurrences when the shelter may be closed as provided above. CENTER will accept animals brought to the shelter by residents of the City of Kingsport. CENTER will allow access to the facility for Animal Control Officers for after-hours or emergency admissions to the shelter. The following constitutes an emergency:
 - i. Vicious domestic animal or domesticated animal that poses a threat to human life.
 - ii. An animal whose owner law enforcement officials or other government officials have detained and whose welfare depends on being placed into protective custody by animal control.
 - iii. An animal whose life is endangered unless immediate care/assistance is provided.

- iv. Anytime confirmation is made by medical authority or a law enforcement officer that an animal has bitten a human.
- g) CENTER's employees or volunteers, during normal working hours, will be available to release animals to their owners that are being held by Animal Control Officers for violations of CITY codes.
- h) Provide a continuing community-wide educational program to familiarize the public with the Animal Control/Shelter Program.
- i) Maintain an up-to-date website with hours of operation and phone number.
- j) Maintain an animal lost and found service.
- k) Maintain appropriate administrative records.
- l) Prepare a monthly administrative report for CITY to be delivered no later than the 10th day of each month which will include the following information on the previous month's activities:
 - i. Total number of animals brought in – including when available – the location where the animal came from and identification of the source of the animal;
 - ii. Purpose for which each animal was brought to the facility;
 - iii. Total number of rabies test performed;
 - iv. Number of animals reclaimed by owners – and length of stay;
 - v. Number of animals euthanized;
 - vi. Number of animals remaining at shelter; and
 - vii. Record of all monetary transactions.

In addition, CENTER will make available to CITY any other information regarding the activities of CENTER carried out pursuant to this Agreement, at reasonable times upon request by CITY as well as a presentation to the Board of Mayor and Aldermen at the end of the third quarter of the fiscal year on the operations of the CENTER.

- m) Provide assistance to the Animal Control Officers in the investigation of animal cruelty and abandonment reports in corporate limit of CITY. Provide assistance and aid in the prosecution of all charges of animal cruelty and abandonment (records, Veterinarian

treatment, charges etc.)

- n) Provide information on animals brought to the shelter to a newspaper of general circulation within city.
- o) Encourage adoption through appropriate news media, including "Pet of the Week" features, stories, and interviews.
- p) Provide for the training of assistants to work at the shelter.
- q) Abide by all local, state, and federal laws, and regulations which may be applicable to the operation of the program herein provided for.

SECTION 3. RESPONSIBILITY FOR EXPENSES. It is understood and agreed by the parties that CENTER is to be self-sustaining financially. Specifically, but without limitation, CENTER will be responsible for the following expenses:

- a) CENTER will pay for all food for the animals in the program.
- b) CENTER will pay all utility charges, such as electricity, water, and phone, and all operational and administrative expenses to operate one or more animal shelters and provide an animal control program at least as comprehensive as the program previously operated by CITY.
- c) CENTER will perform all necessary cleaning and janitorial functions and will be responsible for providing the necessary cleaning supplies and equipment, and personnel at its own expense. CENTER will, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or that may hereafter be in force relating to or affecting the condition, use or occupancy of its premises.
- d) CENTER will perform and bear the expense for all euthanasia and will assume responsibility for final disposal of animals.
- e) Except as otherwise provided herein, CENTER will make arrangements for and bear the expenses of all necessary veterinary services.
- f) CENTER will coordinate with the Tennessee Wildlife Resources Agency and other local organizations for the care, relocation, removal and /or disposal of wild animals in the corporate limits of the CITY.
- g) All animals which are placed in the shelter which are not subsequently reclaimed by owner within five (5) days will become the property of CENTER. CENTER will then have five (5) additional days for adoption of animals. It is agreed that no animals will be sold or released to research or experimental labs. Wild dogs and cats, not suitable for adoption may be immediately euthanized following the waiting period or upon meeting the requirements of

City Ordinance 14-85 be euthanized immediately.

SECTION 4. MAXIMUM PAYMENT. It is expressly understood and agreed that the total amount to be paid by CITY to CENTER under this Agreement will not exceed THREE HUNDRED FIFTY THOUSAND DOLLARS (350,000.00), except as approved by CITY. The payment will be made on July 1, 2023.

SECTION 5. PAYMENT BY CITY. Payments made pursuant to this Agreement will not constitute a final determination by CITY of the allowability of any costs and will not constitute a waiver of any violation of the terms of the Agreement.

SECTION 6. AUDITS. CENTER prior to receiving funds pursuant to this Agreement it must file with the city clerk a copy of an annual report of its business affairs and transactions that includes, but is not limited to:

- a) Either a copy of the entity's most recently completed annual audit or an annual report detailing all receipts and expenditures in a form prescribed by the comptroller of the treasury and prepared and certified by the chief financial officer of such nonprofit organization;
- b) A description of the program that serves the residents of the municipality; and
- c) The proposed use of the municipal assistance.
- d) A listing of revenue sources detailing what percent of the total operating budget they cover.

The report filed pursuant hereto shall be open for public inspection during regular business hours of the city clerk's office. Financial reports shall be available to fiscal officers of the CITY and shall be subject to audit under Tenn. Code Ann. § 6-56-105. CENTER will permit CITY or its representatives to inspect all work, materials, payrolls, and other records with regard to the project, and to audit the books, records, and accounts of CENTER with regard to the project. Such records will be retained for this purpose for a period of not less than three years.

SECTION 7. ACCOUNTING, RECORD KEEPING AND REPORTING REQUIREMENTS. CENTER will establish and maintain an accounting, record-keeping, and reporting system consistent with generally accepted accounting principles and no less than those recommended in the Accounting Manual for Recipients of Grant Funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee. CENTER further agrees to submit to CITY a copy of its most recent audited report at the same time said report is submitted to the State. CENTER will present bi-annually the accounting and record keeping documents to the CENTER Board of Directors.

SECTION 8. LIABILITY. CENTER agrees to hold CITY harmless from any liability of any kind or nature whatsoever which may in any way result from any activities of CENTER, or any of its

agents, employees, or any person, firm or corporation utilizing the premises or the services of CENTER. Specifically, but without limitation, CENTER agrees to the following:

- a) CENTER will provide workers compensation insurance for its employees or other appropriate individuals operating upon the premises. It is further understood by and between the parties that the CENTER director, and any other employees, volunteers, or agents of CENTER, will not be considered agents or employees of CITY, but will be solely under the direct control and supervision of CENTER, an independent contractor, under the terms of this Agreement.
- b) CENTER will furnish liability insurance, specifically naming CITY as an additional insured, to defend, indemnify and save harmless CITY from any and all claims and suits for injuries to person or property arising in any way out of the performance of the Agreement, the use of the premises, or caused in any way by the acts or omissions of CENTER, its agents, employees and representatives, including volunteer workers. CENTER will obtain and maintain in effect at all times said liability insurance in amounts and coverages approved by CITY, within its sole discretion, and will present proof of such insurance to CITY.
- c) CENTER will maintain liability, fire, and other related insurance upon the contents of the building or buildings upon the premises, and CITY will have no responsibility thereof. In case of extensive damage by fire or other casualty to the building or buildings upon the premises, CITY will have the option to terminate this Agreement.

SECTION 9. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES. No member, official, or employee of CITY shall be personally liable to CENTER in the event any provision of the Agreement is unenforceable for any reason; there is any default or breach by CITY; for any amount which may become due under the agreement; or on any obligations under the terms of the Agreement.

SECTION 10. INDEPENDENT CONTRACTOR. CENTER'S relationship with CITY is that of an independent contractor and nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. CENTER is not the agent of the CITY and is not authorized to make any representation, contract, or commitment on behalf of CITY. Neither CENTER nor its employees will, under any circumstances, be considered servants, agents, partners or a joint venture of CITY, and CITY will at no time be legally responsible for any negligence or other wrongdoing by CENTER, or its employees or agents.

SECTION 11. CHANGES. This Agreement may be amended only by a written instrument signed by properly authorized representatives of CITY and CENTER.

SECTION 12. ASSIGNMENT AND SUBLETTING. CENTER may not assign this Agreement without the express written consent of CITY.

SECTION 13. TERMINATION. This Agreement may be terminated by CITY at any time by giving written notice to CENTER at least thirty (30) days before the effective date of such termination. The

parties will meet and discuss the terms of a possible successor agreement, commencing ninety (90) days before this Agreement terminates.

SECTION 14. CHANGED CONDITIONS AFFECTING PERFORMANCE. CENTER will immediately notify CITY of any change in conditions or of any other event which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement.

SECTION 15. ASSURANCES. CENTER hereby assures CITY that CENTER is legally entitled to funds from CITY.

SECTION 16. OPERATING INFORMATION. CENTER will provide any relevant information requested by CITY concerning CENTER's program including, but not limited to, contracts for third party financial arrangements, annual financial statements and audit reports, schedules and fees. When this Agreement requires written permission from the CITY, the Chief of Police is the individual that may grant such permission.

SECTION 17. PROJECT TERM. The term of this Agreement will be one (1) year, commencing upon the day and date above written.

SECTION 18. MISCELLANEOUS. This written Agreement represents the entire Agreement of the parties, and except as set out herein, any prior Agreements, understandings, statements, or negotiations are merged herein. This Agreement will be binding upon the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the signatures of the parties hereto as of the date and year first written in duplicate original form.

[Signatures on Next Page.]

Petworks Animal Services, Inc.

City of Kingsport, Tennessee

Michelle Watts, Executive Director

Patrick W. Shull, Mayor

Date

Date

Printed Name

Attest:

Angela Marshall, Deputy City Recorder

Approved as to form:

Rodney B. Rowlett, III, City Attorney