

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AMENDMENT TO THE AGREEMENT WITH PETWORKS ANIMAL SERVICES, INC. TO PROVIDE FUNDS FOR THE BUILDING CAPITAL CAMPAIGN AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSE OF THE AGREEMENT

WHEREAS, in April, 2022 (RES. NO. 2022-212) the board approved an agreement to help to provide matching funds up to \$250,000.00 to the Petworks building capital campaign which would reduce the Petworks debt burden; and

WHEREAS, the city's contribution of matching funds was contingent upon Petworks receipt of donations in that amount; and

WHEREAS, the parties now deem it advisable for the continued operation of Petworks, which provides a valuable and necessary service to the city and its citizens to waive this requirement; and

WHEREAS, prior to the disbursement of any future funds however, the City Manager shall report to the board of mayor and aldermen concerning the status of the extension or refinancing of Petworks line of credit; and

WHEREAS, funding in the amount of \$142,791 is currently available in the Petworks Debt Reduction project (GP2212).

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That Amendment One to the Funding Agreement with Petworks Animal Services, Inc., for the Petworks building capital campaign, is approved conditional upon a report by the City Manager as to the status of the extension or refinancing of Petwork's line of credit.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized and directed to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, Amendment One to the Funding Agreement with Petworks Animal Services, Inc., to deliver the amendment and take any and all action as may be required on the part of the city to carry out, give effect to, and consummate the transactions contemplated by the agreement and this resolution, said amendment being as follows:

**AMENDMENT ONE
TO THE
CITY OF KINGSFORT, TENNESSEE
AND
PETWORKS ANIMAL SERVICES, INC.
FUNDING AGREEMENT**

THIS AMENDMENT to the AGREEMENT approved by the City of Kingsport on April 19, 2022 is entered into as of this _____ day of _____, 2024, by and between the

City of Kingsport, hereinafter called "CITY", and the PETWORKS Animal Services, Inc., hereinafter called "CENTER".

W I T N E S S E T H:

WHEREAS, CENTER and CITY desire to AMEND their prior Agreement to facilitate CITY's support of CENTER in its building capital campaign thereby reducing financial stressors placed on CENTER and enabling it to focus on the provision of the valuable services CENTER provides to the city and its citizens; and

WHEREAS, CENTER is a not-for-profit agency as defined by Tennessee Code Annotated §§6-54-111 and 48-51-101 et seq., and is eligible to receive funds for this purpose; and

WHEREAS, CITY is authorized by Tennessee Code Annotated §6-54-111 et seq. to provide financial assistance to nonprofit organizations and not-for-profit corporations; and

WHEREAS, CENTER and CITY acknowledge and agree that donated funds are for a public purpose in that CENTER's ability to discharge the outstanding debt on its building will financially strengthen CENTER and thereby empower CENTER to provide animal control services to the City of Kingsport and its residents.

NOW THEREFORE, in consideration of these premises which constitute the exchange of valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. PURPOSE OF THIS AMENDMENT.

To replace in its entirety the original agreement between CENTER and CITY with the terms and conditions set forth herein.

SECTION 2. SERVICES TO BE PROVIDED BY CENTER.

CENTER agrees as follows:

To continue to provide shelter, food and housing for lost, stray and unwanted animals and abide by all existing obligations currently owed to CITY as set forth in those agreements between CENTER and CITY.

SECTION 3. MAXIMUM PAYMENT.

It is expressly understood and agreed that the total amount to be paid by CITY to CENTER under this Agreement will be received by CENTER for its building capital campaign but in no event shall the total compensation from CITY exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) which shall include any amounts heretofore paid towards the building capital campaign.

SECTION 4. 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 5. 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.

The report filed pursuant hereto shall be open for public inspection during regular business hours of the city clerk's office.

Additionally, as a condition to receiving the funding set forth herein financial reports shall be available to fiscal officers of the CITY and shall be subject to audit as CITY deems appropriate. 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 6. 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 7. 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 8. 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 9. 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 wrong doing by CENTER, or its employees or agents.

SECTION 10. CHANGES.

This Agreement may be amended only by a written instruments signed by properly authorized representatives of CITY and CENTER.

SECTION 11. ASSIGNMENT AND SUBLETTING.

CENTER may not assign this Agreement without the express written consent of CITY.

SECTION 12. TERMINATION.

This Agreement may be terminated by either party upon at least 30 days written notice prior the effective date of such termination. CENTER shall be ineligible for any funds which have not been disbursed by CITY to CENTER as of the effective termination date.

SECTION 13. 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 14. ASSURANCES.

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

SECTION 15. 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 16. 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.

[Acknowledgements Deleted for Inclusion in this Resolution]

SECTION III. That the mayor is further authorized to make such changes approved by the mayor and the city attorney to the agreement set out herein that do not substantially alter the

material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION IV. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION V. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 19th day of November, 2024.

PAUL W. MONTGOMERY, MAYOR

ATTEST:

ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

RODNEY B. ROWLETT, III, CITY ATTORNEY