

**NORTH CAROLINA
DURHAM COUNTY**

**SERVICE CONTRACT FOR THE OPERATION OF
THE DURHAM COUNTY ANIMAL SHELTER FY20**

This Agreement is made, and entered into this the 1st day of July, 2019, by and between the COUNTY of DURHAM, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), the SHERIFF OF DURHAM COUNTY, a constitutional officer of the State of North Carolina, (hereinafter referred to as "SHERIFF") and ANIMAL PROTECTION SOCIETY OF DURHAM, INC., a North Carolina non-profit corporation (hereinafter referred to as "APS").

W I T N E S S E T H:

WHEREAS, COUNTY has obligations under the laws of North Carolina and other directives to control dogs, cats, and other animals, and to promote health, welfare and safety of humans and animals; and

WHEREAS, APS has as its goal the promotion of humane treatment of animals; and

WHEREAS, COUNTY is the owner of the Durham County Animal Shelter located at 2117 East Club Boulevard, Durham, North Carolina; and

WHEREAS, the APS currently leases the Animal Shelter from the County via Lease Agreement dated August 14, 2014, as may be amended or extended from time to time (incorporated herein by reference to it) for the purpose of providing daily services necessary to operate and maintain Shelter pursuant to this Agreement and other uses that are related to the protection and care of animals; and

WHEREAS, the objective of the County and APS and the explicit purpose of this Agreement is 1) to protect the safety, health and welfare of the public, 2) to provide shelter, care and protection for animals, 3) to aid and assist the law enforcement officers of Durham County, the City of Durham and the State of North Carolina in preventing cruelty to animals, and 4) to fulfill the governmental obligations imposed upon the County by the North Carolina General Statutes and the pertinent county ordinances which bear on the protection and welfare of animals; and

WHEREAS, the Office of the Sheriff has assumed the responsibility of enforcing the Durham County Animal Control Ordinance and monitoring this contract.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained, and subject to the conditions herein set forth, the parties mutually covenant and agree:

1. DEFINITIONS. The following terms as used herein shall have the following meanings:

- A. Administrative Hold- refers to the designation made by the Sheriff or his designee for animals that are impounded at the Shelter and are the subject of a criminal or civil animal cruelty investigation or lawsuit, or some other investigation and will not become the property of APS until provided custody through surrender by the Owner, release by the Sheriff, or order of a court of competent jurisdiction.
- B. Animal Services- refers to a division of the Office of the Sheriff for the County of Durham responsible for enforcing the Durham County Animal Control Ordinance.
- C. County Manager- refers to the then current County Manager of Durham County, North Carolina.
- D. Durham County Animal Control Ordinance- or "Ordinance" refers to Chapter 4 of the Durham County Code of Ordinances, entitled "Animals".

E. Owner - means any person, group of persons, firm, partnership or corporation owning, keeping, having charge of or taking care of an animal or allowing an animal to remain on his/her property.

F. Shelter - means the Durham County Animal Shelter located at 2117 East Club Boulevard, Durham, North Carolina

2. COMPENSATION. County hereby agrees to pay APS an amount not to exceed Seven Hundred Thirty Thousand Six Hundred Seventy-Four Dollars and Sixty-Three Cents (\$730,674.63) as full compensation for the provision of services under this Agreement ("Annual Compensation"). Payments shall be made to APS in equal monthly installments made during the last week of the month proceeding the month for which the installment is due. Notwithstanding the foregoing, the July and August installments shall be paid the last week of July.

3. EFFECTIVE DATE AND TERM OF CONTRACT. The "effective date" of this Contract shall be the date first set forth above in the preamble to this Contract, irrespective of the date of execution by the parties. The first date written above is July 1, 2019. All renewal or non-renewal periods or deadlines stated in this Contract, if any, shall be calculated based on the "effective date" indicated above.

The term of this Agreement shall be for a period of one (1) year beginning July 1, 2019, and expiring June 30, 2020, ("Term") with the option to renew for additional one year terms commencing on the 1st day of July and terminating on the 30th of June, under the same terms and conditions set out herein unless written notice of termination as herein provided is received at least sixty (60) days prior to the expiration date of this and subsequent agreements, unless terminated sooner by the parties as set forth in Section 4, below. The parties may mutually agree to extend the Term of this Agreement by providing the other notice no later than February 15, of its intent to extend the Term. In the event either party desires to amend any provision of this Agreement, other than compensation (which shall be provided to the County pursuant to section 10) the proposed amendment shall be negotiated and submitted to the County Attorney's Office no later than May 15, prior to the expiration of the then current year.

4. TERMINATION. This contract is subject to the availability of funds to purchase the specified services and may be terminated at any time during the Term upon thirty (30) days notice if such funds become unavailable.

It is understood and agreed that this Agreement may be terminated, for cause, by either party upon sixty (60) days written notice to the other parties. "For cause" shall be defined as a material breach or anticipated material breach of any of the provisions of this Agreement by APS or County. Upon such termination, the parties shall be entitled to such additional rights and remedies as may be allowed by relevant law.

5. SERVICES TO BE PROVIDED BY APS. In consideration of the compensation set forth in Section 2, above and the mutual covenants made herein, APS agrees to provide the following services:

A. Services Provided to Animals. APS shall:

- (1) Care for, at the Shelter, all dogs, cats and other animals (but not wildlife), impounded by Animal Services and/or delivered to it by members of the general public, subject to subsection A (7) below. APS's care of the animals shall be in accordance with Subchapter 52J, the Animal Welfare Section, of the North Carolina Administrative Code, relevant North Carolina General Statutes, and the Durham County Animal Control Ordinance. APS shall not be obligated to accept non-domestic animals from the public if APS is unable to provide adequate care to the non-domestic animal or if taking such animal in would result in overcrowding or an interruption of normal services provided for herein.
- (2) Adopt out, place, or humanely dispose of all animals that are not redeemed, pursuant to the provisions of the North Carolina General Statutes and the Durham County Animal Control Ordinance.
- (3) Provide necessary veterinary care for animals impounded, housed, or surrendered to the Shelter by retaining the

services of a veterinarian licensed to practice in the state of North Carolina. The costs of such veterinary care shall be paid as follows:

- (a) APS shall set a reasonable cap on the costs of such veterinary care for which APS shall pay. The cap shall be written and agreed upon by the County no later than February 15. APS shall not be responsible for any such veterinary costs beyond the reasonable limit set; and
 - (b) Any other remaining necessary costs associated with such veterinary care beyond the reasonable limit and agreed upon by both parties shall be paid in full by County under separate agreement.
- (4) Test all dogs, over 6 months of age for heartworms prior to adoption or placement.
- (5) Test all cats for feline leukemia prior to adoption or placement.
- (6) Give all animals adopted from the Shelter vaccinations as required by standard veterinary care and as appropriate for the age and species of the animal.
- (7) Care for non-domestic animals (including livestock but not wildlife) impounded by Animal Services, at the Owner's expense or to be reimbursed for the costs of care from the proceeds of the auction or sale of said animal(s). In no event shall APS house wildlife which is subject to the jurisdiction of NC Wildlife Commission.
- (a) If APS determines that it is unable to provide direct care for any of the non-domestic animals listed above, County may contract with a third party to provide such care as is reasonably necessary to maintain the health and welfare of the animal(s). County will be responsible for payments to the third party care providers for the costs of care and treatment of any non-domestic animals housed pursuant to this subsection.
 - (b) All funds collected from the Owner by APS or proceeds of auction collected by the Sheriff shall be remitted to the County immediately for proper distribution, including reimbursement to APS for cost of care, based on a line-item invoice submitted by APS and approved by the Sheriff for care of non-domestic animal(s), in an amount not to exceed the proceeds received less Animal Services expenses.
- (8) Provide rabies vaccinations under the direction of the Durham County Health Director to all dogs and cats that are four (4) months old and older that are redeemed from the Shelter and whose Owners cannot show valid proof of current rabies vaccinations, and to all dogs and cats four (4) months old and older that are adopted from the Shelter. The cost of the vaccination shall be in accordance with rate approved by the Board of County Commissioners and documented in the annual County Fee Schedule. These funds shall be remitted to the County pursuant to section B4, below. Replacement tags for vaccinations administered on behalf of redemptions will be provided to the Owner at no cost.

B. Records and Disposition of Funds Collected. APS shall:

- (1) Maintain accurate records and provide to the Sheriff a monthly report of all animals impounded or housed at the Shelter during the preceding month. At a minimum the report should include the type of animal, quantity for each type and reason for impoundment or housing.
- (2) Maintain accurate records and provide to the Sheriff monthly reports of the disposition of all animals handled through the Shelter during the preceding month. At a minimum the report should include the type of animal, quantity for each type and reason for disposition.

- (3) Maintain separate and accurate records of all monies collected for board, redemption fees, and civil penalties and provide to the Sheriff monthly reports of all monies collected during the preceding month.
- (4) Deposit all monies collected for board, impoundment fees, and rabies vaccinations due to the County for animals housed pursuant this Agreement, into the County Revenue Accounts designated by County Finance Department on a daily basis in the manner prescribed by the Sheriff. Separately deposit all monies collected for civil penalties in the County Account designated by County Finance Department on a daily basis in the manner prescribed by the Sheriff. APS shall post all monies collected to the proper account within five (5) business days of receipt of the funds.
- (5) APS shall ensure that all individuals who have the responsibility of handling, collecting or transferring money as a part of APS's management of the Shelter are bonded. A copy of all bonds shall be provided to County.
- (6) Maintain accurate records of all monies collected for adoption fees and retain all funds collected as a result of the adoption of animals through the Shelter.
- (7) Comply with the record keeping requirements established by the State of North Carolina. These include those set forth in Title 2 North Carolina Administrative Code Subchapter 52J, and the reporting requirements set forth in North Carolina General Statute 19A-65, which requires an annual report to be filed with the NC Department of Health and Human Services on or before March 1 of each year setting forth the numbers, by species, of animals received into the Shelter, the number adopted out, the number returned to Owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled.
- (8) Maintain accurate and complete veterinarian records regarding the care and treatment of all animals handled by the Shelter and treated by the Shelter's veterinarian. All veterinarian and Shelter records for animals treated by APS under Administrative Hold, shall be deemed records of the County and shall be turned over to APS with custody when the period of Administrative Hold ends and custody of the animal is lawfully given to APS.

Unless otherwise provided, all reports shall be delivered to the Sheriff or his designee by the 15th of each month for the prior month's activity.

C. Services Provided to the General Public. APS shall:

- (1) Maintain, subject to County approval and budgetary constraints, suitable operational hours at the Shelter for the convenience of the public and for the acceptance of stray, lost, and unwanted animals, provided however, that the Shelter may be closed to the public on Sundays and legal holidays.
- (2) Be courteous to the public.
- (3) Assist, educate and counsel those persons wishing to adopt animals.
- (4) Assist persons in searching for stray, lost or stolen animals by posting in a conspicuous place at the Shelter the procedure for listing a lost and/or found animal.
- (5) Notify Owners of lost or stray animals when ownership can be determined. In furtherance of this service APS shall scan all impounded strays for microchip identification
- (6) Assist the public in viewing impounded animals.

(7) Assist the public with redeeming impounded animals.

(8) Receive animals brought in by the public.

D. Services Provided to County/SHERIFF. APS shall:

(1) Receive all animals seized, impounded or delivered to the Shelter by Animal Services.

(2) Receive all animals required to be quarantined pursuant to NCGS 130A Part 6, or the Ordinance.

(3) Maintain animals in the Shelter for not less than the minimum period specified by the North Carolina General Statutes, or in the Ordinance, whichever is longer, and to maintain those animals which are placed on "Administrative Hold" by Animal Services until released by Animal Services.

(4) Make the Shelter accessible during all hours for the impoundment of animals by Animal Services which includes animal services officers having a key to the kennel, loading and unloading areas. This also includes providing the Sheriff with keys to all doors in the facility for use in emergencies.

(5) Give a receipt to animal services officers for all animals delivered by them to the Shelter.

(6) Collect and deposit per section B4 and B5, above, at the time of redemption, on behalf of County, all boarding fees, redemption fees, fees for rabies vaccination (for redemption only), and any applicable delinquent civil penalties from citizens redeeming animals. The Deposit Forms shall be submitted to Animal Services on a weekly basis. Notwithstanding the foregoing, no owner shall be denied redemption of his animal due to non-payment of delinquent civil penalties. APS shall notify Animal Services in the event an owner fails to pay his/her delinquent civil penalties.

(7) Give all animals which have been placed on Administrative Hold by the Sheriff vaccinations as required by standard veterinary care and as appropriate for the age and species of the animal, including but not limited to: Parvo/Distemper, Rabies, and Feline Rhinotracheitis. Rabies Certificates shall be submitted to Animal Services within one week of inoculation. Further, APS shall implement an internal/external parasite program for all animals on Administrative Hold.

(8) Provide, at a minimum, the following personnel: operations manager, six (6) shelter attendants, and a veterinary technician.

(9) See Lease Agreement for payment terms for various utilities.

E. Adoption Center. APS shall:

(1) Operate and maintain an adoption center at the Shelter in compliance with the Ordinance and any other rules, regulations or manuals adopted by Durham County. APS shall administer the adoption program without regard to sex, race, religion, creed or national origin.

(2) Assist, educate, and counsel persons concerning the adoption of animals from the Shelter.

(3) Maintain records of adoptions for a minimum of three (3) years.

(4) Set and collect adoption fees.

- (5) Provide a spay/neuter program for adoptions.
- (6) Execute adoption agreements.
- (7) Provide to the County a copy of the adoption criteria and adoption agreement currently in effect at the Shelter. Neither the adoption criteria nor the adoption agreement shall be reproduced for public use without the prior approval of APS.

6. SERVICES TO BE PROVIDED BY COUNTY/SHERIFF

A. Cooperate With APS. COUNTY/SHERIFF shall:

- (1) Allow APS to have control over all animals in the Shelter once animals are delivered to the Shelter, subject to the provisions of the Animal Control Ordinance and the laws of the State of North Carolina as they relate to animal control.
- (2) Specify and provide APS with forms as required by the Sheriff and needed to maintain accurate records on animals housed at the Shelter.
- (3) Provide APS access to, or information regarding, the Impoundment Program, and other information necessary to impound, redeem and or adopt animals.
- (4) Provide transportation to animal(s) to and from an appropriate veterinary facility upon determination by APS that the animal(s) is/are in need of veterinary care that cannot be provided at the Shelter.
- (5) Provide the source and means of disposal of any carcass remains of euthanized animals in any form.

7. INDEPENDENT CONTRACTOR. It is understood and agreed by the parties that APS shall perform its duties and responsibilities under this Agreement as an independent contractor, and not as an agent or servant of County or the Sheriff. APS shall not represent itself as an agent or employee of County or Sheriff for any purpose in the performance of APS's duties under this Agreement, nor shall the officers and employees of APS be deemed agents, employees or servants of County or Sheriff for any purpose.

APS shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of APS's activities in accordance with this Agreement. For purposes of this Agreement taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

APS, as an independent contractor, shall perform said services in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

8. CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE. APS acknowledges and agrees that, in the course of its engagement with COUNTY/SHERIFF, APS or its licensors, subcontractors or suppliers in connection with the services to be rendered under this Contract may receive or have access to "confidential information" or "personal identifiable information".

APS or its licensors, contractors or suppliers has obtained or may need to obtain confidential information from the COUNTY/SHERIFF in connection with the provision of services to the COUNTY/SHERIFF or the discussions of such a proposed relationship.

The COUNTY/SHERIFF and APS desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

8.1 **DEFINITIONS.** As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

a. **Trade Secrets.** For purposes of this Contract, trade secrets consist of information of the COUNTY/SHERIFF or APS or any of its suppliers, contractors or licensors: (a) that Derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

b. **Highly Restricted Information.** APS acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) APS will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY/SHERIFF from time to time to protect the confidentiality of Highly Restricted Information, as defined below:

1. Information of the COUNTY/SHERIFF or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
2. Information relating to criminal investigations conducted by the COUNTY/SHERIFF, and records of criminal intelligence information compiled by the COUNTY/SHERIFF.
3. Information contained in the COUNTY/SHERIFF’s personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY/SHERIFF about employees, except for that information which is a matter of public record under North Carolina law.
4. Citizen or employee social security numbers collected by the COUNTY/SHERIFF.
5. Computer security information of the COUNTY/SHERIFF, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
6. Local tax records of the COUNTY/SHERIFF that contained information about a taxpayer’s income or receipts.
7. Any attorney/client privileged information disclosed by either party.

8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.

9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.

10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term “Personal Identifiable Information” shall mean information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked to a specific individual.

8.2 **RESTRICTIONS.** APS shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY/SHERIFF in writing.

b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or CONTRACTOR of the COUNTY/SHERIFF or APS having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY/SHERIFF and APS, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. APS shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the Country’s prior written consent.

c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto or is for the purpose for which such Confidential Information is being disclosed.

d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.

e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.

f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, APS shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such

information.

h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.

i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

8.3 EXCEPTIONS. The COUNTY/SHERIFF agrees that APS shall have no obligation with respect to any Confidential Information that APS can establish was:

a. Already known to APS prior to being disclosed by the COUNTY/SHERIFF;

b. Or becomes publicly known through no wrongful act of APS;

c. Rightfully obtained by APS from a third party without similar restriction and without breach hereof;

d. Used or disclosed by APS with the prior written authorization of the COUNTY/SHERIFF;

e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, APS shall first give to the other party notice of such requirement or request;

f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that APS shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

8.4 REMEDIES. APS acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY/SHERIFF's proprietary interests therein. Accordingly, it is agreed that if APS breaches its obligations hereunder, the COUNTY/SHERIFF shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

8.5 DATA SECURITY. APS shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

APS shall report a suspected or confirmed security breach to the COUNTY/SHERIFF within twenty-four (24) hours after the breach is first discovered, provided that the APS shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the APS to give written notice of a security breach to affected persons, APS shall bear the cost of the notice.

8.6 TRAINING AND NON-DISCLOSURE. Upon request by the COUNTY/SHERIFF, APS agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subcontractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. APS, at the request of COUNTY/SHERIFF, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

9. MAXIMUM SHELTER CAPACITY. It is understood and agreed that maximum capacity per single enclosure

or cage for dogs, puppies, cats, and kittens is as follows:

- (1) three (3) adult dogs per enclosure;
- (2) six (6) puppies (dogs under six months of age) per enclosure;
- (3) two (2) adult cats per cage and;
- (4) six (6) kittens (cats under six months of age) per cage.
- (5) six (6) adult cats or ten (10) kittens per communal room.

An exception will be allowed to the above maximum capacity limits when puppies or kittens are still nursing from a mother dog or cat.

It is understood and agreed that the maximum capacity of the Shelter, including the adoption center, is 180 dogs, 60 puppies, 63 cats and 56 kittens, for a total capacity of 359 animals.

It is understood and agreed that when maximum capacity, as specified above, is exceeded for more than seven (7) consecutive days APS shall dispose of, by adoption, foster care or euthanasia, a sufficient number of animals, as permitted under this Agreement, and North Carolina law, in order to reduce the animal population at the Shelter.

10. USE OF COUNTY FUNDS. It is understood and agreed that County funds paid under this Agreement shall be used only for payment of salaries, employee benefits, care of the animals, operational expenses, and medical treatment for the animals as required under this Agreement. An annual external audit shall be conducted by a qualified accounting firm as a part of this agreement.

11. SETTING FEES, BUDGET REQUEST AND ACCOUNTING. It is understood and agreed that County shall set, approve and, from time to time, modify boarding and redemption fees and civil penalties. APS, subject to County approval, shall set and, from time to time, modify adoption fees.

It is understood and agreed that APS shall, on or before January 15th of each year, provide the Sheriff with a copy of its proposed Animal Shelter budget for the next year as well as a balance sheet statement for the current year, and current and projected expenses. If APS fails to timely provide a proposed budget to the Sheriff as specified herein, this Agreement may be terminated or may be renewed at the previous Agreement amount.

It is understood and agreed that APS shall maintain accurate and detailed records, in accordance with generally accepted accounting principles, consistently applied of all expenditures or costs relating to services provided under this Agreement.

12. MONITORING. The Sheriff shall be responsible for monitoring the Agreement to ensure compliance, providing APS with financial and budgetary information, to generally assist the County and APS in working through administrative problems, and to assist in developing policies which may affect performance of this Agreement.

13. INDEMNIFICATION. To the fullest extent permitted by laws and regulations, the APS shall indemnify and hold harmless the County and the Sheriff and their respective officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this Contract or the actions of the APS or its officials, employees, or contractors under this Contract or under the contracts entered into by the APS in connection with this Contract. This indemnification shall survive the termination of this agreement.

In claims against any person or entity indemnified under this provision by an employee of the APS, a subcontractor, an employee of a subcontractor, or an agent of the APS or a subcontractor, the indemnification obligation under

this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the APS or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

14. INSURANCE. APS shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VI or higher from the A.M. Best Company or an equivalent rating service. All of the policies required of the APS shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the County and/or Sheriff. APS shall advise the Sheriff of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. All of the policies required of the APS shall be primary and the APS agrees that any insurance or self-funded liability programs maintained by the County or Sheriff shall be non-contributing with respect to the APS's insurance.

14.1 Commercial General Liability

Shall be a limit of not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate. Coverage must be in a form providing coverage not less than the standard Insurance Services Office Form CG 00 01 and include products and completed operations, property damage, bodily injury, and personal & advertising injury. The products-completed operations coverage shall be provided for a minimum of one year following final acceptance of the work.

14.2 Commercial Automobile Liability

Shall be a limit of not less than **\$1,000,000** per occurrence for any (Code 1) vehicle, or if APS has no owned autos, hired, (Code 8) and non-owned autos (Code 9).

14.3 Worker's Compensation and Employers Liability

Shall be at North Carolina statutory limits. APS shall satisfy all compulsory requirements relating to workers compensation in any jurisdiction in which benefits may be claimed. Employers Liability shall be a limit of not less than **\$1,000,000** per accident for bodily injury or disease.

Insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. APS, upon request, shall furnish County and/or Sheriff with complete copies of insurance policies required. By requiring insurance herein, the County and Sheriff does not represent that coverage and limits will necessarily be adequate to protect APS, and such coverage and limits shall not be deemed as a limitation on APS's liability under the indemnities granted to the County and Sheriff in this Contract. Any umbrella or excess liability coverage must be at least as broad as the primary coverage and contain all coverage provisions that are required of the primary coverage.

The failure of the County or Sheriff at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the APS to maintain such insurance or to meet its obligations under the indemnification provisions.

The APS shall provide the County a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage as required by the County. Providing and maintaining adequate insurance coverage is a material obligation of the APS. APS shall require its subcontractors to maintain insurance coverage required herein or cover the subcontractors' under the APS's policies. The Certificate of Insurance shall be provided on the industry standard form (ACORD 25).

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the County and Sheriff, which immunity is hereby reserved to the County and Sheriff.

15. HEALTH AND SAFETY. APS shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing services under this Agreement.

16. NON-DISCRIMINATION IN EMPLOYMENT. APS shall not discriminate against any employee or applicant for employment because of age, sex, race, religion, creed, national origin, or disability. APS shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, religion, creed, national origin, or disability. In the event APS is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by County and/or Sheriff, and APS may be declared ineligible for further County and/or Sheriff Agreements.

17. EMPLOYMENT ADVERTISING REQUIREMENTS. APS shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout term of this Agreement; provided that the foregoing requirement does not limit APS'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.

18. GOVERNING LAW. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

19. SUCCESSORS AND ASSIGNS. APS shall not assign its interest in this Agreement without the written consent of County and/or Sheriff. APS has no authority to enter into Agreements on behalf of County or Sheriff.

20. COMPLIANCE WITH LAWS. APS represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this Agreement will be carried out in strict compliance with all Federal, State, or local laws regarding discrimination in employment.

21. NOTICES. All notices which may be required by this Agreement or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM

ATTN: COUNTY MANAGER
DURHAM COUNTY ADMINISTRATIVE COMPLEX
2ND FLOOR 200 EAST MAIN STREET
DURHAM, NORTH CAROLINA, 27701

SHERIFF OF DURHAM COUNTY

ATTN: CHIEF DEPUTY
DURHAM COUNTY SHERIFF
510 S DILLARD ST., 3RD FLOOR
DURHAM, NORTH CAROLINA, 27701

ANIMAL PROTECTION SOCIETY OF DURHAM, INC.

ATTN: SHELTER MANAGER
2117 EAST CLUB BOULEVARD

DURHAM, NORTH CAROLINA 27704

22. AUDIT RIGHTS. For all services being provided pursuant to this Agreement, County and/or Sheriff shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of said services. Audits shall take place at times and locations mutually agreed upon by both parties, although APS must make the materials to be audited available within one (1) week of the request for them. Nothing in this Section shall require APS to make available for inspection or audit APS membership lists and donor lists.

23. COUNTY AND SHERIFF NOT RESPONSIBLE FOR EXPENSES. Neither the County nor Sheriff shall be liable to APS for any expenses paid or incurred by APS unless otherwise agreed in writing.

24. EQUIPMENT. APS shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.

25. SECURITY BACKGROUND CHECKS. The APS is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining COUNTY identification badges and allowed unescorted access to COUNTY facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those Contractor employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a COUNTY contract unless explicitly mandated by law.

The APS will send the results of the background checks to their COUNTY/SHERIFF point of contact who will provide them to the Durham COUNTY Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham COUNTY buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the APS's COUNTY/SHERIFF point of contact of the results of the review. APS can appeal a negative determination by the Security Manager to the COUNTY Manager for final disposition. Appeals need to be submitted in writing to the contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the COUNTY/SHERIFF contract due to adverse information in the background check.

This information will be updated annually by the APS, 90 days prior to the renewal or extension of the contract, and submitted to their COUNTY point of contact who will provide them to the Durham COUNTY Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific COUNTY buildings. The APS shall provide names of all individuals in the APS communications log and to the COUNTY Representative. This information will be reviewed annually.

For those APS employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The APS will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. APS can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse

information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the APS and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

25. HEADINGS. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

26. AMENDMENT. Any amendment, modification or waiver of any provision of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

27. INTERPRETATION. No provisions of this Agreement shall be interpreted for or against any party because that party or the party's agent or legal representative drafted the Agreement or the particular provision, and the parties unconditionally waive such defense or claim regarding this Agreement. This stipulation may be used in court regarding any claims or defenses based on this Agreement.

28. EXISTENCE. APS warrants that It is a corporation duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Agreement.

29. CORPORATE AUTHORITY. By execution hereof, the person signing for APS below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of APS.

30. E-VERIFY. As a condition of payment for services rendered under this Agreement, APS shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if APS provides the services to the County utilizing a subcontractor, APS shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. APS shall verify, by affidavit, compliance of the terms of this section upon request by the County and/or Sheriff.

31. DISPUTE RESOLUTION PROCEDURE. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between COUNTT/SHERIFF and the APS, arising from this Agreement or the services and/or materials being provided by the APS, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the APS in writing of the decision within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

32. REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS. Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in Exhibit B – Federal Uniform Guidance Contract Provisions Certification.

33. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM. It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County's contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County's contracting programs. As part of the implementation of the MWBE Program, Contractors shall complete Attachment 2 – MWBE Utilization Form, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.

34. ENTIRE AGREEMENT. This Agreement shall constitute the entire understanding between County, Sheriff, and APS and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

IN TESTIMONY WHEREOF, the County of Durham has caused these presents to be signed in its name by its County Manager, and the Sheriff of Durham County, and the Animal Protection Society of Durham, Inc., acting under and by virtue of the authority in them vested, have hereunto set their hand and seal, the day and year first written above.

ATTEST:
COUNTY OF DURHAM

Monica Toomer, Clerk to the Board

Wendell Davis, County Manager

SHERIFF OF DURHAM COUNTY

Clarence F. Birkhead, Sheriff of Durham County

This instrument has been pre-audited in the manner
required by the Local Government Budget and Fiscal Control Act.

Susan Tezai, Durham County Chief Financial Officer

ATTEST:
ANIMAL PROTECTION SOCIETY OF DURHAM, INC.,

By: _____
Authorized Representative (Name/Title)

By: _____
Authorized Representative (Name/Title)