

AGREEMENT FOR THE PROVISION OF POUND SERVICES

This Agreement for the Provision of Pound Services (this "Agreement") is made as of this _____ day of _____, 2009, by and among the Charlottesville-Albemarle Society for the Prevention of Cruelty to Animals (the "SPCA"), the County of Albemarle, Virginia (the "County"), and the City of Charlottesville, Virginia (the "City") (the City and the County are hereinafter referred to, individually, as the "local governing body," and, collectively, as the "local governing bodies").

WHEREAS, the local governing bodies are required to maintain or cause to be maintained a pound and to provide certain pound services, pursuant to the guidelines established by the Virginia Department of Agriculture and Consumer Services, §3.2.6546 of the Code of Virginia, 1950, as amended (together with other applicable laws and regulations, including the local governing bodies' regulations of which the SPCA has received reasonable prior written notice, "applicable law"); and

WHEREAS, the SPCA operates a facility at 3355 Berkmar Drive, in Charlottesville, Virginia (the "Facility"); and

WHEREAS, the local governing bodies desire to have the SPCA provide Pound Services (as hereinafter defined) on their behalves, and the SPCA desires to provide Pound Services on behalf of the local governing bodies, in accordance with applicable law, and pursuant to the terms and conditions set forth in this Agreement.

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

1. New Agreement; Term of Agreement. This Agreement replaces in its entirety the covenants and agreements among the County, the City and the SPCA, pursuant to that certain Agreement, dated December 3, 2003, by and among the County, the City, and the SPCA. The initial term of this Agreement shall be for three (3) calendar years, commencing as of July 1, 2009 (the "Commencement Date"). Thereafter, this Agreement shall be renewed, automatically, as of each successive anniversary of the Commencement Date, for additional one- (1-) year terms (each year of the initial term and any renewal term, an "Agreement Year"); provided, however, that (a) following the expiration of the initial three- (3-) year term, the SPCA may terminate its obligations under this Agreement to either or both of the local governing bodies, and either of the local governing bodies may terminate its obligations under this Agreement to the SPCA, by providing at least twelve (12) months' prior written notice to the other parties of its intention to terminate, and (b) the SPCA may terminate its obligations under this Agreement to either of the local governing bodies at any time for failure of such local governing body to appropriate its Annual Fee, as described in paragraph 13 hereof. Notwithstanding termination by one of the local governing bodies, or by the SPCA as to one of the local governing bodies, the obligations between the SPCA and the other local governing body shall continue until this Agreement has been terminated as to all of the parties.

2. Pound Services. The SPCA shall provide Pound Services for all Animals (as hereinafter defined) delivered to the Facility by the County's and City's respective animal control officers (the "ACOs"), including owned Animals surrendered to or impounded by the ACOs, and for all Animals delivered to the Facility by County and City residents who are not owners of such Animals. For purposes of this Agreement, "Pound Services" shall mean the impoundment and care of Animals delivered to the Facility, as more particularly described in EXHIBIT A, attached hereto and made a part hereof, and "Animals" shall mean dogs, cats, and other small animals that are customarily impounded. Except as otherwise expressly provided in this Agreement, or as required by applicable law, the manner in which Pound Services are provided, including, without limitation, the hours of operation and staffing of the Facility, and the decision whether and when to euthanize any Animal, shall be in the sole reasonable discretion of the SPCA.

3. Compensation for Pound Services. In consideration for the provision of Pound Services, as provided herein, the County and the City each shall pay to the SPCA the amounts set forth in the following subparagraphs of this paragraph.

(a) For the Agreement Year commencing on July 1, 2009, payments shall be made as follows:

- i. The County shall pay to the SPCA: (A) the compensation (specifically, the amount of \$198,106) set forth in that certain letter, dated as of May 4, 2009, from the County to the SPCA (the "County Letter"), a copy of which is attached hereto as EXHIBIT B, to be paid in the installments and on the dates set forth in the County Letter, and (B) a capital contribution in the amount of \$50,000, to be paid on or before December 31, 2009.
- ii. The City shall pay to the SPCA: (A) the compensation (specifically, the amount of \$46,650) set forth in that certain letter, dated as of May 4, 2009, from the City to the SPCA (the "City Letter"), a copy of which is attached hereto as EXHIBIT C, to be paid in the installments and on the dates set forth in the City Letter, and (B) an additional payment in the amount of \$39,350, currently held in reserve as set forth in the City Letter, to be paid on or before December 31, 2009.

(b) For the Agreement Year commencing on July 1, 2010, and for each subsequent Agreement Year, the County and the City shall pay to the SPCA their respective annual fees (each, an "Annual Fee"), as calculated in accordance with the following clauses of this subparagraph.

- i. The Annual Fee shall mean an amount equal to the product of: (A) the Population (as hereinafter defined), and (B) the Per Capita Amount (as hereinafter defined).
- ii. The term "Population" shall refer to the estimate of the respective populations of the County and the City, as published, from time to time, by the U.S. Census Bureau (the "USCB"). For purposes of calculating the Annual Fee, the Population shall mean the most recent estimate published by the USCB as of January 30th of the year in which the appropriation request is made.
- iii. The phrase "Per Capita Amount" shall mean: (A) for the Agreement Year commencing on July 1, 2010, a rate of \$4.00; (B) for the Agreement Year commencing on July 1, 2011, a rate of \$5.00; and, (C) for the Agreement Year commencing on July 1, 2012, and for each Agreement Year thereafter, the rate in

effect for the immediately preceding Agreement Year, multiplied by the CPI Amount. For purposes hereof, the "CPI Amount" shall mean the annual average change in the Department of Labor, Bureau of Labor Statistics' Consumer Price Index-All Urban Consumers, U.S. City Average (CPI-U), as published by the Bureau of Labor Statistics (the "BLS"), for the year immediately preceding the Agreement Year for which the Annual Fee adjustment is being made. As of the date hereof, the relevant BLS table is published at <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt>, and the annual average change is described for each year in the last column thereof, titled "Percent Change Avg-Avg."

- iv. The Annual Fees shall be payable in equal quarterly installments, not later than the last day of July, October, January, and April of each year.

4. Responsibilities of the SPCA. The SPCA shall provide Pound Services, as described in EXHIBIT A, as the same may be amended or modified from time to time. In addition, the SPCA shall (a) establish and maintain books and records relating to the operations of the Facility, in accordance with generally accepted accounting principles; (b) prepare, and provide to the local governing bodies copies of, an annual audit and an annual budget; (c) cause its Executive Director or her designee to meet with the local governing bodies at the end of each Agreement Year, or at such other date agreed to among the parties, to discuss the annual audit and the annual budget; (d) retain at all times copies of the books and records relating to this paragraph for the previous five (5) Agreement Years; and (e) at any reasonable time(s) and upon reasonable prior request, provide to the local governing bodies and their respective authorized agents, access to its books and records so that the local governing bodies may confirm that the SPCA is complying with the provisions of this Agreement.

5. Responsibilities of the Local Governing Bodies. The local governing bodies shall pay the Annual Fees, as provided herein. In addition, the local governing bodies covenant and agree to:

- (a) deliver to the Facility, Animals confiscated for "running at large" in the County/City;
- (b) designate a supervising County/City official to whom the SPCA may deliver routine communications, notifications and any other requests;
- (c) require ACOs to comply with the SPCA's check-in procedures and all other written, reasonable rules and regulations of the SPCA, provided that any rules and regulations affecting the provision of Pound Services do not, in the reasonable judgment of the local governing bodies, impair the provision of Pound Services under this Agreement;
- (d) require ACOs and all other County/City personnel to comply with applicable law in the handling and delivery of Animals to the Facility;
- (e) in the case of owned Animals surrendered to an ACO for disposal, provide an admittance form complying with applicable law, with the owner's signature;
- (f) in the case of any dead Animal, provide a written description of the location found and probable cause of death, and deliver such Animal to an area established by the SPCA for examination by SPCA staff prior to cremation;
- (g) in the case of any biting Animal picked up by an ACO, provide, in writing, the owner's name (if known), contact information and any information known to the ACO regarding the circumstances of the bite, and notify the local office of the Virginia Department of Health;
- (h) in the case of any Animal with aggressive behavior or any other serious behavioral issue known to or described to an ACO, provide such information, in writing, on the SPCA

admission form;

- (i) permit the SPCA control, to the extent permitted by law, over all Animals upon delivery by ACOs to the Facility, including decisions regarding euthanasia; provided, however that ACOs may suggest euthanasia by providing reasons for such marking, in writing, contemporaneously with delivery of such Animals;
- (j) provide reasonable advance notice, when practicable, to the SPCA in cases of a large number of animals confiscated or impounded from one situation (a large number shall be greater than 10 Animals);
- (k) handle stray and injured Animal calls in the County and the City, as applicable; and
- (l) exercise best efforts to resolve any disagreement regarding the implementation of this Agreement by consulting with the Director of the SPCA.

6. Default. Failure by the County to pay any amount set forth in the County Letter, failure by the City to pay any amount set forth in the City Letter, and failure by either of the local governing bodies to pay any installment of the Annual Fees within fifteen (15) days following the date on which such payment is due, shall constitute a default hereunder as to the non-paying local governing body. Failure by the applicable local governing body to cure such payment default, or failure by either a local governing body or the SPCA to cure any other material breach of this Agreement, including any material breach of the audit provisions of paragraph 4 of this Agreement, within fifteen (15) days following receipt of written notice thereof, may result in termination of this Agreement, as to the defaulting party or parties, at the election of the non-defaulting party.

7. Insurance. The SPCA shall maintain sufficient insurance to protect itself and the local governing bodies from any claims that may arise from the operation of the Facility pursuant to this Agreement. Such insurance shall meet or exceed the minimum coverage requirements established by the local governing bodies, and may be provided by commercial carriers or by self-insurance or by any combination of the two. A certificate from the insurance provider, naming the local governing bodies as additional insureds, shall be provided to the local governing bodies upon request.

8. Indemnification. The SPCA shall be responsible for, shall defend against and shall indemnify and hold the County Indemnitees and City Indemnitees (as hereinafter defined) harmless from and against, any and all lawsuits, claims, demands, losses or actions made or taken against any of the County and City Indemnitees based upon, arising from, or incident to the decisions and/or actions of the SPCA or any of its officers, directors, employees, agents or volunteers in the performance of the obligations of the SPCA pursuant to this Agreement. For purposes hereof, the "County Indemnitees" shall mean, collectively, the County and its Board of Supervisors, employees, representatives, officials and agents; the "City Indemnitees" shall mean the City and its Council, employees, representatives, officials and agents.

9. Assignment. No party shall assign or transfer all or any part of its right, title or interest in this Agreement, without the prior written consent of the other parties.

10. Governing Law. This Agreement shall be governed by the laws and regulations of the Commonwealth of Virginia.

11. Notices. All notices required to be given under this Agreement shall be delivered, by

first-class registered mail, as follows:

To the SPCA:

Charlottesville-Albemarle SPCA
3355 Berkmar Drive
Charlottesville, Virginia 22901
Attn: Executive Director

To the County:

County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902
Attn: County Executive

To the City:

City of Charlottesville
605 East Main Street
Charlottesville, Virginia 22902
Attn: City Manager

12. Complete Agreement; Amendments. This Agreement constitutes the final expression of the parties and supersedes all previous agreements and understandings, written or oral, relating to the rights and responsibilities of the parties hereunder. This Agreement may not be altered, amended or modified except by written instrument executed by duly authorized representatives of the parties.
13. Non-appropriation. The local governing bodies' obligations to pay the Annual Fees shall be subject to annual appropriation of the necessary funds. Notwithstanding anything in this Agreement to the contrary, failure to obtain such appropriation shall result in the automatic termination of this Agreement, at the election of the SPCA, as to the non-appropriating local governing body, and the local governing body's obligation to pay any outstanding portion of the Annual Fee accrued through and including the date of termination, if applicable, shall survive such termination.

IN WITNESS WHEREOF, the parties do hereby set forth their signatures, and do hereby represent that the individuals who have executed this Agreement have been duly authorized to bind the local governing bodies and the SPCA, respectively, to the terms and conditions hereof.

CHARLOTTESVILLE-ALBEMARLE SOCIETY FOR THE PREVENTION
OF CRUELTY TO ANIMALS ("SPCA")

By:


Susanne Kogut, Executive Director

COUNTY OF ALBEMARLE, VIRGINIA ("COUNTY")

By: _____
Robert W. Tucker, Jr., County Executive

Approved as to form:

By: _____
County Attorney

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
Gary O'Connell, City Manager

Approved as to form:

By: _____
City Attorney

EXHIBIT A

The purpose of this EXHIBIT A is to more particularly describe the pound services ("Pound Services") which are the subject of that certain Agreement for the Provision of Pound Services (the "Agreement"), dated as of ____, 2009, by and between the Charlottesville-Albemarle Society for the Prevention of Cruelty to Animals (the "SPCA"), the County of Albemarle, Virginia (the "County"), and the City of Charlottesville, Virginia (the "City") (the City and the County are hereinafter referred to, individually, as the "local governing body," and, collectively, as the "local governing bodies").

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

Except as otherwise specifically provided in the Agreement, or as required by applicable law, the manner in which Pound Services are provided, including, without limitation, the hours of operation and staffing of the Facility, and the decision whether and when to euthanize any Animal, shall be in the sole reasonable discretion of the SPCA.

Pursuant to the Agreement, the SPCA shall provide Pound Services as follows in accordance with, and to the extent permitted by, applicable state law, regulations and local ordinances:

1. Impound and care for all Animals delivered to the Facility by the ACOs.
2. Impound and care for Animals delivered to the Facility by County/City residents who are not the owners of such Animals.
3. Place, hold, euthanize, transfer, or otherwise dispose of impounded Animals.
4. Provide treatment and controlled drugs for euthanasia and other medical purposes.
5. Provide applicable license and documentation as required by applicable law.
6. Maintain and publicize appropriate hours of operation. Should the SPCA propose to reduce the hours of operation to an amount below that which is in effect at the time of commencement of this agreement, it shall notify the local governing bodies about the proposed reduction and the local governing bodies shall be entitled to a reduction in the Annual Fee equal to any actual annual increase in animal control costs resulting directly from the reduced hours of operation.
7. Maintain accurate written or computerized accounts of all Animals impounded (except where the ACOs are required to maintain such records, as provided in the Agreement).
8. Permit authorized representatives of the County/City to access SPCA impoundment records, upon reasonable prior notice.
9. Perform all procedures required by applicable law, including those relating to impounded Animals that have bitten a person.
10. Respond in a timely manner to any violations that are identified, in writing, as a result of annual State inspections of the Facility.
11. Allow the ACOs to have access to the Facility premises for the purpose of delivering Animals twenty-four (24) hours a day.
12. Properly dispose of euthanized animals.
13. Provide regular maintenance and cleaning of impoundment areas of the Facility, as required by applicable law.

14. Make dog and cat runs or cages available at all times for Animals delivered by the ACOs.
15. Provide reasonable and necessary veterinary treatment and vaccinations to impounded Animals.
16. Develop and practice an emergency evacuation plan and a plan for sheltering Animals abandoned or lost in the event of a natural disaster in the County/City.
17. Notify the local office of the Virginia Department of Health of biting Animals delivered by parties other than ACOs, confine such Animals in accordance with applicable law, and ensure that such Animals are available for inspection by the Virginia Department of Health at the end of the applicable confinement period.
18. Prevent the delivery of any Animal for adoption or return to its owner unless such Animal is properly licensed.
19. Use best efforts to transport small, wounded wild animals to any wildlife facility or licensed wildlife rehabilitator, if reasonably possible.
20. Comply with all other requirements for Animal impoundment under applicable law.
21. Exercise best efforts to resolve any disagreement regarding the implementation of this Agreement by consulting with the chief of the police department(s).

EXHIBIT B

[County Letter]



COUNTY OF ALBEMARLE

Department of Finance
Budget Office
401 McIntire Road
Charlottesville, Virginia 22902-4596
Telephone (434) 872-4516 Fax (434) 872-4519

May 4, 2009

Ms. Susan Kogut, Executive Director
Charlottesville-Albemarle SPCA
3355 Berkmar Drive
Charlottesville VA 22901

Re: FY09/10 Funding Allocation

Dear Ms. Kogut,

This letter is to confirm that on April 8, 2009, the Albemarle County Board of Supervisors approved an appropriation of \$198,106 to the Charlottesville-Albemarle SPCA for FY 09/10. This amount includes \$2,400 in anticipated State revenue for the sterilization program.

As in prior years, if your funding allocation is over \$10,000, you will receive a quarterly payment at the beginning of each quarter, starting July 1. If your funding allocation is less than \$10,000, you will receive a one-time lump sum payment shortly after July 1. If any of these funds allocated to your agency remain unused at the end of FY 09/10, the unspent balance should be returned to Albemarle County.

If you have any questions about your FY 09/10 budget allocation, please do not hesitate to contact me at 872-4516 or via e-mail at bneitz@albemarle.org.

Sincerely,

Brenda K. Neitz
Budget Analyst

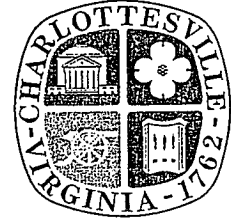
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EXHIBIT C

[City Letter]

CITY OF CHARLOTTESVILLE
"A World Class City"

Office of The City Manager



P.O. Box 911 • Charlottesville, Virginia 22902
Telephone (434) 970-3101
Fax (434) 970-3890
www.charlottesville.org

May 4, 2009

Ms. Susanne Kogut
Exec. Director
SPCA, Inc.
3355 Berkmar Drive
Charlottesville, VA 22901

Dear Ms. Kogut:

The purpose of this letter is to inform you of the amount of funding for your agency in the City's Adopted Budget for Fiscal Year 2009-2010 (July 1, 2009 – June 30, 2010). The Adopted Budget contains a total of \$46,650 for the SPCA, Inc. in the upcoming fiscal year.

Payment will be made in the form of 4 payment(s) in the amount(s) of \$11,662.50 on the first of the month in July 2009, October 2009, January 2010, and April 2010.

There is also \$39,350 in reserve for the SPCA that will be released once the following conditions are met and reported out to City Council for their final approval:

- A revised contract agreement for pound services is reached, preferably between all current parties – the City, County and SPCA;
- Exploration of SPCA assume control of the Animal Control function; and
- A performance/financial audit of the SPCA as a whole.

I know we have a meeting in place for May 25th at which time I hope we can discuss in more detail the above conditions and a means of moving forward. I look forward to seeing you then.

If you have any questions in the meantime, please contact me at 970-3105 or via e-mail at beauregard@charlottesville.org.

Sincerely,

Leslie Beauregard, Director
Budget and Performance Management