

POUND SERVICE AGREEMENT

THIS AGREEMENT, effective as of the _____ day of _____, 2021 (the “**Agreement**”), is made:

BETWEEN

THE CORPORATION OF THE CITY OF CORNWALL
(hereinafter referred to as the “**City**”)

And

THE ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
(hereinafter called the “**Society**”)

(collectively the “**Parties**” and each a “**Party**”)

WHEREAS Section 7(i) of the City’s *Animal Control By-Law*, 112-1998, as may be amended from time to time (the “**By-Law**”) requires the City to establish a Pound (as such term is defined in the *Animal for Research Act*, R.S.O. 1990, Chapter A.22, and any regulations made thereunder, in each case as may be amended from time to time (the “**Act**”));

AND WHEREAS the Society has agreed to provide certain services to the City in relation to the establishment and operation of the City’s Pound and other ancillary services;

AND WHEREAS the Society and the City wish to enter into this Agreement to set out the terms pursuant to which the Society will provide such services to the City.

NOW THEREFORE the Parties agree as follows:

1. APPOINTMENT

- 1.1 The City hereby appoints the Society to serve as a Pound for the City with the duties of such Pound to be exercised by the Society to impound dogs, in accordance with the provisions of the By-Law and the Act.
- 1.2 The City hereby grants to the Society the right to dispose of all dogs impounded which have become the property of the City, at no cost to the City, after the expiry of the required Redemption Period (as defined below). Pursuant to Section 20(1) of the Act and Section 7(j) of the By-Law, the Redemption Period for dogs is seventy two (72) hours from the time of impounding, exclusive of holidays and the day of impoundment (the “**Redemption Period**”).

- 1.3 The City hereby grants to the Society the right to collect and retain all pound fees, from individuals that are claiming their dog during the Redemption Period, as prescribed in Schedule "A".

2. POUND

- 2.1 The Society agrees to provide, at its expense an animal shelter capable of providing adequate accommodation for all dogs impounded by the City (the "**Pound Services**"), such Pound to be designed and operated in accordance with the Act and, in particular, Regulation 23 (Pounds) thereunder.
- 2.2 The Society agrees to receive, impound and hold, during the Redemption Period, for claiming by the owners, any dog delivered to the Society's animal shelter, being utilized as the City's Pound, by a Municipal Law Enforcement Officer (as such term is defined in the By-Law), a resident of Cornwall or other duly authorized individuals.
- 2.3 The Society agrees to provide and install all the equipment necessary for the proper operation of a pound.
- 2.4 The Society agrees to deliver to the City on a quarterly basis, a written report of the operations of the Pound up to the last day of the preceding month, showing the number of impounded dogs received at the Pound, the length of time spent in the Pound and details regarding the disposal of dogs.
- 2.5 In providing the Pound Services and Disposal Services (as defined below), the Society shall carry out such services in a professional manner, at a level that is consistent with industry standards, all in accordance with applicable laws, including but not limited to the Act and the By-Law.

3. DISPOSAL OF ANIMALS

- 3.1 The Society agrees to dispose of unclaimed dogs, after the expiry of the Redemption Period, by either sale or euthanasia (the "**Disposal Services**").
- 3.2 The Society agrees to be responsible for providing and paying for all veterinary fees for any euthanasia services required after the Redemption period. During the redemption period all veterinary fees, as prescribed in Section 6 of this Agreement, including euthanasia are the responsibility of the City.

4. SALE OF MUNICIPAL DOG - TAGS

- 4.1 The Society agrees to sell municipal dog tags on behalf of the City, only to those owners who are claiming their dog and do not already have a tag, and to retain 100% of those

fees. For all other residents, the society shall promote and encourage the licensing of animals through other approved animal tag vendors in the City.

- 4.2 The Society shall provide the City with a report and receipts detailing the individuals who have purchased their annual dog tag from the Society on a bi-monthly basis.

5. REMUNERATION FOR SERVICES

- 5.1 In consideration of the provision of the Services, the City will pay the Society the service fee in the amounts set out in Schedule "A" attached hereto (the "**Service Fees**").
- 5.2 The City agrees that any aggressive dog delivered to the Society by a Municipal Law Enforcement Officer (as such term as defined in the By-Law), or other duly authorized individuals, shall be subject to an additional fee, as prescribed in Schedule A for an aggressive dog.
- 5.3 For the purposes of this Agreement, an aggressive dog shall mean a dog that is transported to the Society by a Municipal Law Enforcement Officer or their designate, following a documented investigation where it has been determined that the dog has bitten, attacked or attempted to bite or attack a person or domestic animal as determined by the City ("**Aggressive Dog**"), and such designation shall apply only for the Redemption Period.
- 5.4 The City and the Society agrees that after the Redemption Period an Aggressive Dog that remains unclaimed will be disposed of in accordance with Sections 1 and 3 of this Agreement.
- 5.5 The City and the Society agree that no Aggressive Dogs delivered to the Society shall require to be impounded for a period longer than the Redemption Period.
- 5.6 Notwithstanding Section 5.5, In the event the City advises the Society to hold any dog, longer than the redemption period, due to a quarantine or other reason, the dog shall incur an extended stay fee ("**Extended Stay Fee**") for the duration of its stay as prescribed in Schedule "A". In addition, any veterinarian fees as prescribed in Section 6 of this Agreement, during the extended stay, shall also be the responsibility of the City. For greater clarity the Aggressive Dog Fee and Extended Stay Fee shall not be charged by the Society on the same day.
- 5.7 The Society shall provide the City with an invoice for the Service Fees on a monthly basis. The City shall pay the amount of any undisputed invoices in full to the Society within thirty (30) days of receipt of such invoice.
- 5.8 The Society agrees to provide a detailed invoice to the City describing the name, complete address including postal code and phone number of each individual that drops off a dog

to the society, in order for the City to determine proper residency within the geographical boundaries of the City of Cornwall.

6. ANIMAL CARE

- 6.1 The City shall promptly transport injured dogs to a veterinarian, if the owner of the animal is unknown or cannot be located in a timely fashion. The City will be responsible for the payment of veterinary fees to keep the animal comfortable. Once the animal has been treated and released from the veterinary clinic, the City may transport the dog to the Society.
- 6.2 In the event that the Society is required to comply with a Public Health Ontario mandate for rabies vaccination pursuant to Regulation 567 or the Health Protection and Promotion Act of Ontario, the City shall reimburse the Society for the cost of vaccinating all dogs brought into the Pound under this agreement, with exception of unclaimed dogs which are adopted after the expiry of the Redemption Period, pursuant to Section 3.1 and dogs brought to the Pound as a result of a dog bite quarantine by a Municipal Law Enforcement Officer or their designate. Owner's claiming their dog during the Redemption Period shall be required to pay restitution to the Society for such vaccination alleviating the City of any financial obligation. If the Owner fails to pay restitution to the Society, the Society shall contact the City for further directives prior to releasing any dog. In the event that the Society fails to contact the City prior to releasing a dog, the Society acknowledges that the City will not be responsible for any additional costs.
- 6.3 Subject to the following, if the owner of a dog is unknown or cannot be located in a timely fashion, the City agrees to pay, for medical care required to keep a sick or injured dog comfortable while in the care of the Society but still the property of the City (the "**Veterinary Fees**" and together with the "**Service Fees**", the "**Fees**"). If the dog owner is identified and pays restitution to the Society for such Veterinary Fees, the City shall not be responsible to pay the Society for such Veterinary Fees. If the Owner fails to pay restitution to the Society, the Society shall contact the City for further directives prior to releasing any dog. In the event that the Society fails to contact the City prior to releasing a dog, the Society acknowledges that the City will not be responsible for any additional costs.
- 6.4 The City agrees that this Agreement only addresses dogs impounded under the authority of the By-Law.
- 6.5 The City agrees that this Agreement does not include cats, exotic animals, wildlife, roadkill, deadstock or deceased dogs.
- 6.6 The City agrees to provide ample advanced notice, where possible, prior to the delivery of any dog considered aggressive so the Society may prepare and staff for the additional handling requirements.

- 6.7 The Society shall provide the City with an invoice for any outstanding Veterinary Fees on a monthly basis. The City shall pay the amount of any undisputed invoices in full to the Society within thirty (30) days of receipt of such invoice.

7. CONFIDENTIALITY

- 7.1 All processes, documents, data, plans, material, policies or information including but not limited to information, knowledge or data of a personal, intellectual, technical, scientific, commercial or industrial nature, or relating to the operations of a Party, that is obtained by the other Party ("**Receiving Party**") or furnished to the Receiving Party in connection with this Agreement, including the terms of this Agreement ("**Confidential Information**"), shall be maintained by the Receiving Party in strict confidence and shall not be disclosed to any person or entity for any reason or used by the Receiving Party except as necessary for it to perform its obligations under this Agreement.
- 7.2 The limitations contained in this section shall not apply to (a) Confidential Information which is in the public domain at the time of disclosure; (b) Confidential Information that becomes part of the public domain after disclosure through no fault of the Receiving Party; (c) Confidential Information that the Receiving Party can prove was known by the Receiving Party at the time of disclosure; (d) Confidential Information that the Receiving Party can prove was supplied to the Receiving Party by a third party or was independently developed by the Receiving Party; or (e) Confidential Information required to be disclosed pursuant to judicial process.
- 7.3 The Society acknowledges that the City is subject to and shall comply with the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).

8. INSURANCE

- 8.1 During the Term of this Agreement, the Society will maintain in full force and effect (at its sole expense), such insurance as would be maintained by a prudent person in the position of the Society, including but not limited to commercial general liability insurance with a limit of not less than five million dollars (\$5,000,000) for any one occurrence. Such insurance shall include but not be limited to public liability and property damage, erroneous death or injury to an animal, contractual liability, cross and several liability and voluntary medical expenses.
- 8.2 The Society's insurance shall name the City as an additional insured for purposes of this Agreement. The Society shall provide evidence of such insurance to the City on an annual basis and shall provide the City with thirty (30) days' prior written notice of any material change to, cancellation or non-renewal of its insurance coverage.

9. INDEMNIFICATION

- 9.1 The Society agrees to indemnify and hold harmless the City, its elected officials, officers, employees and all of their successors and assigns (the “**Indemnified Parties**”), from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Services or otherwise in connection with this Agreement, except to the extent caused by the negligence or wilful misconduct of the Indemnified Parties.

10. TERM AND TERMINATION

- 10.1 This Agreement shall commence on the 1st of January, 2021 and shall continue in full force effect until December 31, 2025 (the “**Term**”).
- 10.2 This Agreement shall be automatically renewed for subsequent periods of twelve (12) months each unless one of the Parties provide the other Party with written notice at least ninety (90) days’ prior to the end of the then current Term that it does not wish to renew this Agreement.
- 10.3 This Agreement may be terminated prior to the end of the Term by either Party in the event that, in carrying out their obligations hereunder, as applicable:
- a. the other Party breaches any term or condition of this Agreement, and fails to remedy such breach upon the expiry of thirty (30) days’ written notice from the non-breaching Party of such breach or, with respect to a breach that cannot be remedied with the thirty (30) day period, such longer period of time as may be required to remedy the breach in the circumstances, provided the breaching Party has commenced to remedy the breach within the thirty (30) day period and is actively and diligently taking appropriate measures to remedy the breach; or
 - b. the other Party becomes insolvent and/or proceedings have been commenced under any legislation or otherwise for its dissolution, liquidation or winding-up, or bankruptcy, insolvency or creditors’ arrangement proceedings have been commenced by or against such Party.
- 10.4 Either Party may terminate this Agreement at any time for any reason upon ninety (90) days’ prior written notice to the other Party.
- 10.5 Each Party acknowledges that, on any termination of this Agreement, the Society shall be entitled to payment of any Fees accrued and payable pursuant to the terms of this Agreement, as is applicable, as of the effective date of termination.

- 10.6 Upon termination of this Agreement, each Party shall immediately return to the other Party all records, files, lists, documents, equipment and any other property in its possession or control belonging to the other Party.

11. NOTICE

- 11.1 Any notice, document or other communication required to be given under this Agreement shall be in writing and shall be sufficiently given if sent by personal delivery/courier, registered mail or email to the other Party at its address indicated below:

- a. If to the City:

100 Water Street East, Cornwall, ON K6H 6G4
Attention: Charles Bray
Telephone: 613-930-2787
Email: cbray@cornwall.ca

- b. If to the Society:

16586 Woodbine Ave, Stouffville, L4A 3W2
Attention: Tom Stephenson
Telephone: 905-898-7122
Email: tstephenson@ontariospca.ca

Or to such other address, email address or person that the Party designates in writing to the other Party. The notice shall be deemed to have been delivered on the day of personal delivery, on the day received by email (as evidenced by a transmission confirmation), or on the fifth day following mailing.

12. GENERAL

- 12.1 **Relationship of the Parties:** This is an agreement for the performance of services and does not and shall not be deemed to create a joint venture, partnership, and fiduciary or agency relationship between the Parties for any purpose. The Society is engaged as an independent contractor for the sole purpose of providing services. Neither the Society, nor any of its personnel are engaged as an employee, servant or agent of the City. The Society further agrees to be solely responsible for any and all payments and/or deductions required to be made respecting Employment Insurance, Canada Pension Plan, Québec Pension Plan, Workers' Compensation, Income Tax or such payment deductions falling within this particular category.
- 12.2 **Entire Agreement:** This Agreement and any agreements and documents to be delivered pursuant to the terms of this Agreement, constitute the entire agreement between the Parties relating to the subject matter of this Agreement.

- 12.3 **Survival:** Except as otherwise provided in this Agreement, those terms and conditions that ought reasonably to survive the termination of this Agreement, shall survive termination.
- 12.4 **Amendments:** No amendment of this Agreement will be effective unless set out in writing and signed by both Parties.
- 12.5 **Assignment:** This Agreement cannot be assigned by either of the Parties without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 12.6 **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario. Each Party irrevocably and unconditionally attorns to the exclusive jurisdiction of the Courts of the Province of Ontario.
- 12.7 **Severability:** If any provision of the Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Agreement and all other provisions of the Agreement shall remain in full force and effect.
- 12.8 **Waivers:** The waiver by a Party of a breach of any term or condition of the Agreement shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.
- 12.9 **Execution and Delivery:** This Agreement may be executed in counterparts, including counterparts by facsimile transmission or scanned emailed copies. Each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument.
- 12.10 **Independent Legal Advice:** Each of the Parties acknowledge having read and understood this Agreement, having had the opportunity to obtain independent legal advice regarding this Agreement and having done so or refused to do so of their own volition.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have executed this Agreement the date set out above.

THE CORPORATION OF THE CITY OF CORNWALL

Per: _____

Name: Bernadette Clement

Title: Mayor

Per: _____

Name: Manon L. Levesque

Title: City Clerk

I have the authority to bind the City

**ONTARIO SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS**

Per: _____

Name: Tom Stephenson

Title: Chief Financial Officer

I have the authority to bind the Society

SCHEDULE "A"

Service Fees

In consideration of the provision of the Services, the City agrees to pay the Society the following Service Fees:

Pound Name: Ontario SPCA – Stormont, Dundas & Glengarry Animal Centre
550 Boundary Road
Cornwall, Ontario
K6H 5S3
(613) 936-0072

1. The City agrees to pay the Society a monthly retainer fee in the amount of one thousand dollars (\$ 1,000) for its services for providing a Pound (the "**Retainer Fee**").
2. The City agrees to pay an amount of four hundred and fifty dollars (\$ 450) for each dog that is impounded by a Municipal Law Enforcement Officer (as such term as defined in the By-Law), a resident of Cornwall or other duly authorized individuals.
3. The City agrees that the fee described in paragraph 1 and 2, above shall increase annually on the anniversary date of the contract by an amount equal to the CPI for the preceding twelve month period per the Government of Canada website www.statscan.gc.ca for the term of the contract.

Other Fees:

Impound Fee: \$ 80.00/Dog
Boarding Fee: \$ 25.00/Day
Aggressive Dog: \$ 100.00/Day (for a maximum of three (3))
Extended Stay Fee: \$100.00/Day (pursuant to Section 5.6)