

CITY OF PRINCE GEORGE

ANIMAL POUND

OPERATION & MAINTENANCE AGREEMENT

BETWEEN:

CITY OF PRINCE GEORGE

AND:

**THE BRITISH COLUMBIA SOCIETY FOR
THE PREVENTION OF CRUELTY TO ANIMALS
and its NORTH CARIBOO DISTRICT BRANCH (Prince George)**

CITY OF PRINCE GEORGE

ANIMAL POUND

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CITY OF PRINCE GEORGE
ANIMAL POUND
OPERATION & MAINTENANCE AGREEMENT

THIS AGREEMENT is dated for reference the 17th day of March 2020.

BETWEEN:

CITY OF PRINCE GEORGE

a municipal corporation,
1100 Patricia Boulevard,
Prince George, British Columbia
V2L 3V9

(herein called the "City")

OF THE FIRST PART

AND:

THE BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a society

continued under Provincial statute, 1245 East 7th Avenue,
Vancouver, British Columbia, V5T 1R1, carrying on a
Branch Office under the name and style of North Cariboo
District Branch (Prince George), and the said **NORTH
CARIBOO DISTRICT BRANCH (Prince George)**, P.O.
Box 2388, Prince George, B.C. V2N 2S6

(herein called the "Society")

OF THE SECOND PART;

WHEREAS:

- A. The City has passed an Animal Control Bylaw, by which the City authorized, inter alia, the following:
- (i) the establishment, maintenance and operation of a pound;
 - (ii) the appointment of a poundkeeper; and
 - (iii) an agreement with such persons, firms, societies or corporations for the purpose of maintaining and operating its pound and for the collection, distribution, and payment of revenue and expenditures derived from the operation of the pound;

- B. The City owns the Pound located at 4011 Lansdowne Road, Prince George, British Columbia, V2N 4W7;
- C. The City wishes to engage the Society to operate and maintain the Pound and to appoint the Society as Poundkeeper; and
- D. The Society is experienced in the operation and maintenance of a Pound and in the provision of services of the type and quality required of a Poundkeeper, and the Society has agreed to operate and maintain the Pound and to provide the services of a Poundkeeper on the terms and conditions set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the terms, conditions and provisos hereinafter set forth, the parties hereto agree as follows:

PART 1. INTERPRETATION

- 1.01 **Definitions:** In this Agreement, all words which are defined in the Animal Control Bylaw shall have the meanings ascribed to those words in the Animal Control Bylaw, unless the context otherwise requires, or unless such words are otherwise defined in this Agreement;
- 1.02 **Meanings:** In this Agreement, and in the Schedules attached to this Agreement, the following words and phrases shall have the meanings ascribed to them in this Paragraph:
 - (a) **"After-Hours Veterinarian Fee"** means all fees charged by a veterinarian to the city as referenced in section 7.06 when the City Animal Control Officers deliver, or facilitate, injured or sick animals to receive veterinary care outside of normal business hours of the

pound;

- (b) **"Animal Containment Area"** means that area of the Pound that is devoted primarily to the containment of animals, and includes the exercise area and the Temporary Animal Containment Area;
- (c)
 - (i) **"Animal Control Bylaw"** means the City of Prince George Animal Control Bylaw No. 7771, 2005 and amendments thereto adopted by Council from time to time, both before and after this Agreement is signed by the parties hereto; and
 - (ii) **"Comprehensive Fees and Charges Bylaw"** means the City of Prince George Comprehensive Fees and Charges Bylaw No. 7757, 2004 and amendments thereto adopted by Council from time to time, both before and after this Agreement is signed by the parties hereto;
- (d) **"Animal Control Fees"** means the additional charge levied pursuant to the Comprehensive Fees and Charges Bylaw if it was necessary for an Animal Control Officer to impound the animal, or otherwise as determined by Council from time to time;
- (e) **"Animal Control Officer"** means a person employed by the City as an Animal Control Officer pursuant to the Animal Control Bylaw, or otherwise as determined by Council from time to time;
- (f) **"Animal Report"** means a statement of the total numbers of:
 - (ii) Dogs:
 - (A) number of dogs impounded from within the City boundary; and
 - (B) disposal of these dogs:

- claimed by owner
- transferred to SPCA
- euthanized
- adopted
- shipped out of town
- held in kennel
- paid disposal
- other disposition.

(iii) Cats:

(A) number of cats impounded from within the City boundary; and

(B) disposal of these cats:

- claimed by owner
- transferred to SPCA
- euthanized
- adopted
- shipped out of town
- held in kennel
- paid disposal
- other disposition.

(iv) Other:

(A) number and final disposition of any other animals impounded from within the City boundary;

(g) **"Annual Animal Report"** means an Animal Report in respect of the activities of the Society pursuant to this Agreement for each Year during the Term;

(h) **"Annual Revenue Report"** means a Revenue Report in respect of the activities of the Society pursuant to this Agreement for each Year during the Term;

(i) **"Audited Financial Statements"** means the audited financial statements referred to in Section 9(4)(a) of the *Prevention of Cruelty to Animals Act* [RSBC 1996] Chapter 372 and amendments thereto, regarding the North Cariboo District Branch (Prince George) of the

Society;

- (j) **"Certificate of Insurance"** means a certificate of insurance confirming the insurance coverage required by this Agreement to be supplied by the Society;

- (k) **"City Licence"** means the animal licence prescribed by the Animal Control Bylaw or otherwise determined by Council from time to time;

- (l) **"City Licence Fees"** means the animal licence fees set out in the Animal Control Bylaw or otherwise determined by Council from time to time;

- (m) **"Commencement Date"** means **January 1, 2020**, or such other date, if any, as may be agreed upon in writing between the parties hereto;

- (n) **"Commission Fees"** means the fees that the Society is entitled to be paid for the sale of Licenses at the Pound by the Society, and unless otherwise agreed to in writing between the City and the Society, the Commission Fees shall be:
 - (i) for each City licence sold by the Society at the Pound, whether the licence is sold in respect of an animal that has been neutered or not neutered, the Society shall be entitled to receive from the Municipality that commission which is set forth in the Comprehensive Fees and Charges Bylaw from time to time as being the commission to be paid to businesses selling licenses; and

- (ii) for each City licence sold by the Society at the Pound, whether the licence is sold in respect of an animal that has been neutered or not neutered, the Society shall be entitled to receive from the Municipality that commission which the City pays or allows from time to time as the commission to be paid or allowed to persons or businesses selling animal licenses;

- (p) **"Contract Price"** means the sum of **\$1,105,885.36**;

- (q) **"Council"** means the council of the City of Prince George from time to time;

- (r) **"Euthanasia Fees"** means the fees for destroying an animal as set out in the Comprehensive Fees and Charges Bylaw or otherwise as determined by Council from time to time;

- (s) **"Event of Force Majeure"** means any event or circumstance other than financial beyond the reasonable control of the parties, including, without limitation, fire, explosion, flood, windstorm, freezing, act of God, war or riot, or inability of the City to obtain any utilities or service, or unavoidable suspension of supply by the City of any utilities or service;

- (t) **"Expiry Date"** means **December 31, 2024**, or such other date, if any, as may be agreed upon in writing between the parties hereto;

- (u) **"Impoundment Fees"** means the impoundment fees, including the treatment fees if any for vaccination, de-worming, and external parasite control, provided the same are set out in the Comprehensive

Fees and Charges Bylaw or otherwise determined by Council from time to time;

- (v) **"Land"** means the lands more particularly described as:
PARCEL IDENTIFIER: **012-985-732**
LEGAL DESCRIPTION: **LOT 2 DISTRICT LOT 753**
CARIBOO DISTRICT PLAN 9022;
- (w) **"List of Directors"** means the list of directors of the Society referred to in Section 9(4)(b) of the *Prevention of Cruelty to Animals Act* [RSBC 1996] Chapter 372 and amendments thereto;
- (x) **"Maintenance Fees"** means the maintenance fees set out in the Comprehensive Fees and Charges Bylaw or otherwise determined by Council from time to time;
- (y) **"Pound"** means the Land, and all buildings, structures and improvements comprising the pound facility on the Land and, without limiting the generality of the foregoing, includes the perimeter fence, parking lot, and Animal Containment Area;
- (z) **"Pound Equipment"** means all fixtures and equipment necessary to operate and maintain the Pound and to provide the services of a Poundkeeper, and without limitation, includes the City Fixtures and Equipment and the Society Fixtures and Equipment;
- (aa) **"Municipal Licence"** means the animal licence prescribed by the City of Prince George from time to time;
- (bb) **"Municipal Licence Fees"** means the animal licence fees determined by the City of Prince George from time to time;

(cc) **"Revenue Report"** means an itemized statement of the total amounts of money arising from all:

- (i) City Licence Fees;
- (ii) Commission Fees;
- (iii) Impoundment Fees;
- (iv) Maintenance Fees;
- (v) Animal Control Fees;
- (vi) Euthanasia Fees; and
- (vii) Adoption Fees;

received or receivable by the Society as a result of this Agreement, in a form and with a degree of detail as reasonably required by the City from time to time;

(dd) **"Adoption Fees"** means the money derived from the adoption of animals as set out in the Comprehensive Fees and Charges Bylaw or otherwise determined by Council from time to time;

(ee) **"Society Fixtures and Equipment"** means all fixed and moveable equipment necessary or desirable to the operation and maintenance of the Pound, which may or may not be necessary or desirable to the operation of a traditional SPCA animal shelter at the Pound, save and except the City Fixtures and Equipment;

(ff) **"Temporary Animal Containment Area"** means that area of the Pound that is devoted primarily to the containment of animals delivered to the Pound by Animal Control Officers of the City at a time when the Pound is not open;

(gg) **"Term"** means the duration of this Agreement, which shall be for a period of **FIVE (5) YEARS**, from the **Commencement Date** of **January 1, 2020** to the **Expiry Date** of **December 31, 2024**, unless

sooner terminated or later extended in accordance with the provisions hereof; and

(hh) **"Year"** when used in reference to the period covered by an Annual Report, means a calendar year, or such other 12-month period as may be determined by the City from time to time.

1.03 **Captions and Headings:** The captions appearing in this Agreement have been inserted for reference and convenience only and in no way affect the interpretation or construction of this Agreement.

1.04 **Schedules:** The following schedules attached hereto and are hereby incorporated into and form part of this Agreement:

SCHEDULE A	Licence to Occupy
SCHEDULE B	Payment of Contract Price

PART 2. AGREEMENT

2.01 **Engagement:** The City hereby engages the Society, as an independent contractor, to supply all personnel, labour, supervision, management, services, supplies, feeds, materials, equipment and facilities, except those supplied by the City pursuant to this Agreement, that are necessary or desirable to operate and maintain the Pound and provide the services of a Poundkeeper, on the terms and conditions set forth in this Agreement.

2.02 **Acceptance of Engagement:** The Society hereby accepts the engagement by the City on the terms and conditions set forth in this Agreement.

2.03 **Location Exception:** The Branch shall not provide the services of a Poundkeeper at any location other than at the Pound, unless specifically

instructed to do so by the City from time to time.

- 2.04 **Limitation of Powers:** The Branch shall only exercise the powers of a Poundkeeper pursuant to the Animal Control Bylaw of the City, and not pursuant to any other Bylaw of the City.

PART 3. TERM, RENEWAL, LIMITED EXTENSION

- 3.01 **Commencement Date and Expiry Date:** This Agreement shall commence on the **Commencement Date of January 1, 2020** and shall terminate on the **Expiry Date of December 31, 2024**, unless sooner terminated or later extended in accordance with the provisions hereof.

- 3.02 **Term:** The Term of this Agreement shall be for a period of **FIVE (5) YEARS**, unless sooner terminated or later extended in accordance with the provisions hereof.

- 3.03 **Renewals Not Assured:** There is a possibility that this Agreement might be renewed, in whole or in part, however any such renewal is subject to satisfactory performance by both the Society and the City, and is subject to the decision of both the Society and the City to enter into a renewal agreement on terms and conditions that are satisfactory to both parties.

- 3.04 **Limited Extension of Term is Possible:** If a renewal of this Agreement, or a new Agreement regarding the same subject matter, is not signed by the parties hereto on or before the December 31, 2024 Expiry Date of this Agreement, the Term shall be automatically be extended on a month to month basis for a period of not more than 12 months on the same terms and conditions at set out in this Agreement, subject to the right of either party to cancel such limited extension effective as of the last day of any month during such limited extension by giving to the other party not less than one month's prior written notice of the cancellation of such limited extension of

the Term.

PART 4. PAYMENTS AND REVENUE

4.01 **Payment of Contract Price:** The City shall pay the Contract Price to the Society in installments as set forth in Schedule B. The installments will be paid by cheque in Canadian funds made payable to the Society by the City not later than TWENTY (20) DAYS after the end of each calendar month as set forth in Schedule B, or at such other time or in such other manner, if any, as may be agreed upon between the City and the Society from time to time. Provided always however, if under this Agreement or any matter related hereto the Society becomes obligated to pay any sum of money to the City and such sum is overdue, then such sum may, at the discretion of the City, and without limiting or waiving any right or remedy of the City under this Agreement, be set off against and shall apply to any sum of money owed by the City to the Society, until such sum has been completely set off.

4.02 **Payment of City Licence Fees:** The Society shall pay the City Licence Fees to the City for each month of the Term. The monthly payment of the City Licence Fees to the City will be by cheque made payable to the City by the Society not later than TWENTY (20) DAYS after the end of each calendar month during the Term, or at such other time or in such other manner as may be agreed upon between the City and the Society from time to time.

4.03 **Payment of Commission Fees on City Licenses:** Subject to the receipt by the City of a monthly invoice for Commission Fees from the Society, the City shall pay to the Society the Commission Fees due on the sale of City Licenses for each month of the Term. The monthly payment of the Commission Fees to the Society will be by cheque made payable to the Society by the City not later than TWENTY (20) DAYS after the end of the calendar month in which the City receives from the Society the monthly

invoice for Commission Fees during the Term, or at such other time or in such other manner as may be agreed upon between the City and the Society from time to time.

4.04 **Retained Money:** The Society shall be entitled to retain the money which it collects arising out of its operation of the Pound and the provision of the services of a Poundkeeper pursuant to this Agreement, as follows:

- (a) Impoundment Fees;
- (b) Maintenance Fees;
- (c) Animal Control Fees;
- (d) Euthanasia Fees; and
- (e) Adoption Fees.

4.05 **Taxes and Assessments:** The Society shall collect and remit all taxes statutorily required to be collected and remitted by it, under all applicable laws and regulations, arising out of its operations or any provision of this Agreement, including, but without limiting the generality of the foregoing, all goods and services tax, sales tax, harmonized sales tax, value added tax, or otherwise which may be in force from time to time, and by whatever name such tax or taxes are known. If required by law, the Society shall take all steps necessary to become registered under the legislation governing such tax or taxes, and amendments thereto from time to time. The Society shall pay all taxes and fees, including without limitation, all assessments under the *Workers Compensation Act* [RSBC 1996] Chapter 492 and amendments thereto, that are levied or imposed on the Society under all applicable laws and regulations arising out of or resulting from its operations under this Agreement. The Society shall make and remit all payroll deductions on account of income tax, Employment Insurance premiums and Canada Pension Plan contributions or otherwise, required under applicable law. The Society shall deliver to the City on demand, satisfactory evidence of

compliance with this Paragraph. The Society shall be responsible for any interest or penalties resulting from the Society's failure to remit such sums when due.

4.06 **Municipal Property Taxes:** The City shall be responsible for municipal property taxes, if any, in regard to the Pound.

4.07 **Revenues Not Guaranteed:** It is expressly understood and agreed by the Society that the services pursuant to this Agreement will be provided as and when required to meet the demands of users of the Pound and will not necessarily be continuous or regular. The type, volume, time and duration of the services required will depend on conditions over which the City has no control. It is expressly understood and agreed that the City makes no representation or warranty with respect to the volume of use of the Pound or the volume of sales or other revenues which the Society will enjoy or may expect.

4.08 **Amount of Fees:** The Society will comply strictly with the provisions of the Animal Control Bylaw and the Comprehensive Fees and Charges Bylaw, and with directions from Council or from the Province from time to time in assessing and collecting only those fees which are prescribed in the Animal Control Bylaw or the Comprehensive Fees and Charges Bylaw or by Council or by the Province from time to time. In its operations pursuant to this Agreement, the Society will neither assess nor collect any fees that are not prescribed by the Animal Control Bylaw or the Comprehensive Fees and Charges Bylaw or by Council or by the Province from time to time.

4.09 **Billing:** The Society will be entirely responsible for billing and collecting all fees charged or rendered to others within the terms of this Agreement pursuant to the Animal Control Bylaw or upon directions from Council or from the Province from time to time. It is understood and agreed that the

City will not be responsible for bad debts that might arise from non-collection of such charges by the Society.

PART 5. RECORDS AND REPORTING

5.01 **Reporting:** The Society shall prepare and deliver to the City at the times specified below, the following:

- (a) **Annual Animal Report:** not later than NINETY (90) DAYS after the end of each Year during the Term an itemized Annual Animal Report made up to the end of such Year;
- (b) **Annual Revenue Report:** not later than NINETY (90) DAYS after the end of each Year during the Term an itemized Annual Revenue Report made up to the end of such Year;
- (c) **Audited Financial Statements:** not later than TWENTY (20) DAYS after each annual general meeting of the Society the Audited Financial Statements of the Society and List of Directors of the Society; and
- (d) **Other Information:** immediately on request in writing by the City, such invoices, receipts, vouchers, cash register tapes, bank deposit slips and other financial or accounting statements, and other data, activity reports or other documents as the City may request.

5.02 **Books and Records:** For the Term of this Agreement the Society shall maintain at its offices at the Pound complete and accurate books, records and accounts of all operations of the Pound under this Agreement, in accordance with generally accepted accounting principles consistently applied, including without limitation such books, records and accounts as may reasonably be required to determine or verify all and any sums of

money both incoming to and outgoing from the Society in connection with the operation and maintenance of the Pound and the provision of the services of a Poundkeeper pursuant to this Agreement. The City, or its duly authorized representative, shall be entitled during normal business hours upon reasonable prior notice to the Society to examine and take copies of or make extracts from all such books, records and accounts.

PART 6. FIXTURES AND EQUIPMENT

6.01 **Title to Society Fixtures and Equipment:** The Society has, at its own cost, supplied and installed the Society Fixtures and Equipment. Except as provided in this Agreement, title to and property in such Society Fixtures and Equipment supplied by the Society shall at all times remain with the Society and the City shall acquire no right, title or interest in and to such Society Fixtures and Equipment. When not in default under this Agreement, the Society may remove the Society Fixtures and Equipment, provided that the Society shall make good any damage or injury to the Pound resulting from such removal.

6.02 **Society Alterations:** The Society may at any time and from time to time at its expense, paint and decorate the interior of the Pound, install fixtures and equipment, and make such changes, alterations, additions and improvements in and to the Pound, all as will in the judgment of the Society better adapt the Pound for the purposes for which the same are permitted to be used hereunder; provided, however, that no changes, alterations, additions or improvements to the structure, any perimeter wall, the floor or the roof of the Pound building, or the fire-protection system, the heating, ventilating, air-conditioning, plumbing, electrical or mechanical systems, shall be made without the prior written consent of the City, and without the use of contractors or other qualified workmen to be approved by the City. All changes, alterations, additions, improvements, whether structural or otherwise, shall comply with all applicable statutes, regulations or by-laws

or any municipal, provincial or other governmental authority.

- 6.03 **No Removal of Alterations:** The Society agrees that at the expiration or earlier termination of this Agreement all changes, alterations, additions and improvements made to or installed upon or in the Pound whether made pursuant to this Agreement or otherwise and which in any manner are attached in, to, on or under the floors, walls or ceilings other than Society's Fixtures and Equipment shall remain upon and be surrendered to the City with the Pound as a part thereof, without disturbance, molestation or injury and shall be and become the absolute property of the City without any payment or indemnity by the City or any third party to the Society, unless the City shall by notice in writing require the Society to remove the same, in which event the Society shall restore the Pound as nearly as reasonably possible to the same condition it was in prior to the Society taking occupancy of the Pound under this Agreement, and Society shall make good any damage or injury caused to the Pound resulting from such installation or removal.
- 6.04 **Removal of Society Fixtures and Equipment:** The Society may, provided it is not in default under this Agreement, remove the Society Fixtures and Equipment, provided that the Society shall make good any damage or injury caused to the Pound resulting from such removal.
- 6.05 **Consent of City Required:** The Society shall not make any repairs, opening or additions to any part of the exterior of the Pound, nor place any attachments, decoration, signs or displays in or upon any area of the Pound, without the written consent of the City, failing which the Society will be held responsible for all ensuing costs and damages whether to remove such items or to effect repairs needed as a result of such acts.
- 6.06 **Prevent Liens:** The Society shall not permit, do, or cause anything to be

done to the Pound during the period of construction and fixturing of the Pound or at any other time which would allow any lien, lis pendens, judgment or certificate of any court or any mortgage, charge or encumbrance of any nature whatsoever to be imposed or to remain upon the Pound. In the event of the registration of any lien or other encumbrance by a contractor or sub-contractor of the Society, the Society shall at its own expense immediately cause the same to be discharged, and if the Society shall not immediately discharge the lien whether by payment into Court or otherwise, the City may pay such lien and in such event the Society shall immediately pay such amount to the City on demand.

- 6.07 **Builders Lien Act Notices:** The City shall be entitled but shall not be obliged to post notices at the Pound to take advantage of any provision under the *Builders Lien Act* [SBC 1997] Chapter 45, and amendments thereto, limiting the City's liability for improvements made to or installed upon the Premises.

PART 7. PERFORMANCE OF SERVICES

- 7.01 **Comply With Agreement:** During the Term the Society shall operate and maintain the Pound and provide the services of a Poundkeeper all in strict accordance with the terms and conditions of this Agreement.
- 7.02 **Society to Supply All Equipment, Labour and Supplies:** Except for the Pound and the City Fixtures and Equipment supplied by the City pursuant to this Agreement, the Society shall as an independent contractor supply as and when required all personnel, labour, supervision, management, services, supplies, materials, equipment and facilities that are necessary or desirable to operate and maintain the Pound and provide the services of a Poundkeeper, on the terms and conditions set forth in this Agreement. In particular, and without limiting the generality of the foregoing, the Society shall supply the Society Fixtures and Equipment.

7.03 **Traditional Animal Shelter:** The Society is required to perform only the services contemplated in this Agreement in the operation and maintenance of the Pound and the provision of the services of a Poundkeeper. The Society shall also be at liberty, if it wishes, to offer the additional services of a traditional SPCA animal shelter at the Pound, provided the City has given its prior written approval to such additional services. The Society shall give the City a full description of the proposed additional services it proposes to offer at the Pound, and the City will give its prior written approval to such additional services provided the offering of such additional services does not in the opinion of the City interfere with the operation and maintenance of the Pound and the provision of the services of a Poundkeeper as required by this Agreement. The Society will make such alterations to the additional services offered at the Pound as the City and the Society agree upon from time to time. The Society is responsible to supply all Pound Equipment necessary to the operation and maintenance of the Pound and the provision of the services of a Poundkeeper save and except the City Fixtures and Equipment. Society may if they wish also supply all Society Fixtures and Equipment necessary or desirable to operate their traditional animal shelter at the Pound save and except the City Fixtures and Equipment which the Society is permitted to use in the operation and maintenance of the traditional animal shelter.

7.04 **Diligent Performance:** The Society shall operate and maintain the Pound in a good and workmanlike manner and shall otherwise conduct its operations under this Agreement faithfully and diligently and in accordance with all terms and conditions of this Agreement.

7.05 **Hours of Service:** Subject to the Pound or parts thereof being closed due to weather conditions, the Society shall operate and maintain the Pound or applicable parts thereof on such days and during such hours of operation as

the City and the Society agree upon from time to time.

7.06 **No After-Hours Service:** The Society will not be required to provide services pursuant to this Agreement outside of normal hours of operation of the Pound as agreed upon between the City and the Society from time to time. The City Animal Control Officers will respond to any after-hours call regarding an injured or sick animal by taking the animal to a veterinarian on call. In respect of each after-hours call-out regarding an injured or sick animal the City will be responsible to pay the After-Hours Veterinarian Fee and any immediate care required for the animal prior to the Pound opening at 8 AM. The City will be responsible for the cost of calling-out the City Animal Control Officer. Immediate care would include the examination, veterinarian recommended urgent diagnostics and initial treatment of an animal to ensure they are stabilized, not in pain or distress, or euthanized as recommended by the Veterinarian under the PCA Act for Critical Distress. The Society may approve additional or continued care after 8am and will be responsible for any costs associated from 8am onward.

7.07 **Shelter Identification Numbers:** The Society will be responsible to assign to each animal in the Pound a Shelter Identification Number, and to enter each Shelter Identification Number into a record-keeping system as determined by the City for this purpose from time to time.

7.08 **Directed Service:** Without limiting the generality of the services required to be supplied pursuant to this Agreement, the City shall have the right from time to time, in order to comply with Court orders and otherwise in the discretion of the City, to provide directions to the Society in specific instances, and upon such directions from the City the Society shall:

- (a) destroy a lawfully impounded animal immediately upon receipt of direction to do so from the City;

- (b) detain a lawfully impounded animal at the Pound until receipt of further direction from the City; or
- (c) not release an animal from the Pound to its owner unless the owner complies with the terms and conditions set by the City in that specific instance.

7.09 **Temporary Animal Containment Area:** The Society will operate and maintain kennels in a Temporary Animal Containment Area at the Pound, as follows:

- (a) for the purpose of clarification, the Society will be responsible for providing the services of a Poundkeeper at the Temporary Animal Containment Area, as well as all other areas of the Pound;
- (b) the Temporary Animal Containment Area will be located near the rear door of the Pound building;
- (c) the Temporary Animal Containment Area will be devoted primarily to the containment of animals delivered to the Pound by Animal Control Officers at a time when the Pound is not open;
- (d) the Animal Control Officers shall have the right to deposit healthy animals in the Temporary Animal Containment Area at any time when the Pound is not open, and the City and the Society will arrange for separate keyed access to the Temporary Animal Containment Area to be provided to the Animal Control Officers;
- (e) at the Temporary Animal Containment Area the Society will provide a system of cards or some other system approved by the City upon

which the Animal Control Officers will record information regarding:

- (i) the date and time the animal was seized;
- (ii) the location at which the animal was seized; and
- (iii) any special holding instructions regarding the animal;

and such records will be retained by the Society and made available to the City upon request from time to time;

- (f) the Society will clear out the Temporary Animal Containment Area on a daily basis by moving the animals into the regular Animal Containment Area of the Pound.

7.10 **Manner of Operation:** The manner of operation and maintenance of the Pound and the provision of the services of a Poundkeeper shall be rendered by the Society and its employees and volunteers in an orderly, professional and courteous manner and as set forth in this Agreement. The Society and its employees and volunteers shall operate and maintain the Pound and provide the services of a Poundkeeper and otherwise perform the obligations of the Society under this Agreement in a manner which in the opinion of the City reflects favourably on the City. The Society and its employees and volunteers shall observe and comply with City of Prince George Clean Indoor Air Bylaw #4708, 1986 as amended from time to time.

7.11 **Inspection:** The City by its authorized representative shall at all times be entitled to enter the Pound and all other facilities under the control of the Society pursuant to this Agreement and conduct any inspection the City wishes for the purpose of determining whether or not the Society is carrying out its obligations hereunder in accordance with the terms and conditions of this Agreement.

- 7.12 **Suspension of Service:** The City may direct the Society to partially or completely suspend all or any part of the operation of the Pound or the provision of services for any time or times when, in the opinion of the City acting reasonably, the operation of the Pound or the provision of services of a Poundkeeper or any part thereof would be in any way detrimental.
- 7.13 **Performance:** The Society shall operate and maintain the Pound and provide the services of a Poundkeeper in a manner that will meet or exceed all reasonable requirements of users of the Pound on an efficient, courteous and effective basis.
- 7.14 **Performance Review:** A review of the performance of the Society pursuant to this Agreement may be conducted by the City from time to time and the Society shall, if such performance review is not satisfactory to the City, immediately improve its performance as directed by the City from time to time. Provided always that the failure by the City to conduct such performance review shall not in any way excuse the Society from the performance of its obligations pursuant to this Agreement.
- 7.15 **Consultation:** The Society shall, as frequently, and as regularly as required by the City, consult with the City regarding all aspects of the operation and maintenance of the Pound and the provision of the services of a Poundkeeper, the operations of the Society at the Pound, and the performance of the obligations of the Society under this Agreement. The Society shall not without the prior approval of the City make any material change in the Society's method of management or operations.
- 7.16 **Management Team:** The Society shall appoint a Management Team (the "Management Team") assigned to the management of the operations of the Society in the Pound under this Agreement. The Management Team shall

report regularly for work at the Pound. Upon extraordinary circumstances and with notice to the city, the manager may conduct management operations from a distance. The appointment of the Management Team and any replacement thereof from time to time shall be subject to the approval of the City, such approval not to be unreasonably withheld. In the case of a change in the Management Team, the replacements shall be qualified and experienced in duties of the type required to be performed by the Society at the Pound and to the extent possible shall be trained by the departing Management Team member at the Pound or shall otherwise be sufficiently trained to assume full responsibilities at the Pound within a reasonable time after the departure of the preceding Management Team member.

7.17 **Personnel:** All personnel used in the operation and maintenance of the Pound and the provision of the services of a Poundkeeper, whether employed or volunteer, shall be under the control and direction of the Society and shall be qualified for and have proper and sufficient training and experience in the duties assigned to them. The Society shall not engage any new employee or volunteer person for the operation and maintenance of the Pound and the provision of the services of a Poundkeeper, and shall replace any person if already so engaged, to which the City has any reasonable objection, of which notice has been given to the Society.

7.18 **Security Measures:** The Society will develop and implement such security measures as may be prescribed by the City from time to time after consultation with the Society. The City will pay for the locks on the Pound building to be changed and the City will install an alarm system in the Pound building and will inform and instruct the Society in the operation and maintenance thereof.

7.19 **Supplies Quality:** All supplies used by the Society in the operation and maintenance of the Pound and the provision of the services of a

Poundkeeper shall conform in all respects to all applicable laws and regulations. All supplies kept on hand shall be stored and handled with due regard for security and sanitation, and all disposable supplies must be of a biodegradable nature.

7.20 **Services Pricing:** The Society must operate and maintain the Pound and provide the services of a Poundkeeper at the prices set forth in the Comprehensive Fees and Charges Bylaw, or which have otherwise been approved by the City from time to time. The Society will not make any changes to such prices, nor levy any other charges upon users of the Pound, without the prior written authorization from the City.

7.21 **Sanitation:** The Society will keep all areas of the Pound clean, orderly, sanitary and free of all waste, rubbish and debris at all times and in strict accordance with applicable laws and regulations. Without limiting the generality of the foregoing, the Society will be responsible for cleaning and sanitation of the Pound and all equipment, floors, walls, shelving and tabletops and for emptying waste receptacles and removing waste from the Pound.

7.22 **Disposal of Animal Carcasses:** The Society will be responsible to dispose of animal carcasses at all times and in strict accordance with applicable laws and regulations, and in accordance with instructions from time to time issued by the City either on a general basis or on a case by case basis.

7.23 **Restrictions:** The Society shall not, without the prior written approval of the City:

(a) make any alterations to the Pound or City Fixtures and Equipment;

(b) remove from the Pound any of the City Fixtures and Equipment;

- (c) sell, offer for sale, distribute or provide at the Pound any services, other than the services specifically referred to or contemplated by this Agreement;
- (d) sell, offer for sale, distribute or provide at the Pound any goods, merchandise, pet foods or pet supplies; or
- (e) enter into any agreement with any third party to subcontract or sublicense the whole or any part of the obligations of the Society pursuant to this Agreement.

7.24 **Payment of Accounts:** The Society shall pay as and when due all costs, expenses and accounts suffered or incurred by it in the operation and maintenance of the Pound and the provision of the services of a Poundkeeper and in supplying services or carrying on its operations or performing its obligations under this Agreement, or otherwise agreed to under this Agreement, and shall deliver to the City at its request satisfactory evidence of the payment thereof. The Society shall not suffer or permit any lien or charge to be filed or registered against the Pound or claimed against the City arising out of or relating to any such costs, expenses or accounts. If any such lien or charge is so filed, or claim is made, and is not released or discharged forthwith on notice by the City to the Society, the City shall be entitled, but not obliged, to take such steps as may be reasonable and necessary to release or discharge any such lien or charge or claim, including payment of any costs, expenses or accounts (except to the extent that the City has been notified that the same are in dispute) or the provision of security therefor, and all costs and expenses, including without limitation legal fees and disbursements of a solicitor on a solicitor and own client basis, suffered or incurred by the City in connection therewith shall be immediately due and payable by the Society to the City on demand.

7.25 **Payment of Wages:** The Society shall pay as and when due all charges, assessments, costs, expenses and accounts suffered or incurred by it in the operation and maintenance of the Pound and the provision of the services of a Poundkeeper or supplying and providing the services or carrying on its operations or performing its obligations under this Agreement, including but without limiting the generality of the foregoing, all wages, assessments, deductions and payments under the *Employment Standards Act* [RSBC 1996] Chapter 113, and the *Workers Compensation Act* [RSBC 1996] Chapter 492, and under the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.)), the *Employment Insurance Act* (S.C. 1996, c. 23), and the *Canada Pension Plan* (R.S.C. 1985, c. C-8), and amendments thereto, and upon request shall deliver to the City evidence to the City's satisfaction that payments of such wages, assessments, deductions, and payments have been made.

7.26 **Payment of Taxes:** The Society shall pay as and when due all charges, assessments, costs, expenses and accounts suffered or incurred by it in the operation and maintenance of the Pound and the provision of the services of a Poundkeeper and in supplying and providing the services or carrying on its operations or performing its obligations under this Agreement, including but without limiting the generality of the foregoing, all taxes on the labour, materials, equipment, supplies, services used or contracted for in the carrying on of its operations or in the performance of its obligations under this Agreement, and including, but without limiting the generality of the foregoing, all goods and services tax, sales tax, harmonized sales tax, value added tax, or otherwise which may be in force from time to time, and by whatever name such tax or taxes are known, and upon request shall deliver to the City evidence to the City's satisfaction that payments of such assessments and taxes have been made. Provided however, the City shall be responsible for municipal property taxes, if any, in regard to the Pound.

7.27 Repairs and Maintenance:

- (a) The Society shall at all times during the Term at its own cost and expense repair, maintain and keep the Pound, and all equipment, fixtures, doors, windows, plumbing, drains, sewer and electrical systems within the Pound in good order and repair, as a careful owner would do, reasonable wear and tear, and damage by insured hazards and repairs for which the City is responsible under Paragraph 7.27(h) only excepted, and the Society shall perform such maintenance, effect such repairs and replacements and decorate at its own cost and expense as and when necessary or reasonably required so to do by the City.

- (b) The Society shall be responsible for preventative maintenance and repair of the Pound and all City Fixtures and Equipment at the Pound. Such repairs or maintenance required shall be performed in a good and workmanlike manner by the Society or its authorized and qualified contractors or tradesmen.

- (c) The City will not be responsible to repair or replace the City Fixtures and Equipment when the same have been consumed or have reached the end of their normal life expectancy. In such event, the costs to repair or replace such City Fixtures and Equipment shall be the sole responsibility of the Society. Any new Fixtures purchased by the Society and are attached to the Pound building will become the property of the City. Any new Equipment purchased by the Society that is not attached to the Pound building will remain the property of the Society.

- (d) At the end of the Term or any limited extension thereof (unless the Term is terminated by the City pursuant to Paragraph 7.28) the Society will deliver up possession of the Pound and the City Fixtures

and Equipment in the condition in which the Society is required to maintain or replace the same, and, without limiting the generality of the foregoing, the Society will at its own expense paint the inside of all doors and frames and paint or wash the inside of all walls in the Pound, all to the reasonable satisfaction of the City.

- (e) The Society shall at its own expense promptly repair and make whole with materials of at least equivalent quality all damaged glass, plate glass, doors, windows, ceiling, ceiling tiles, lights, lighting fixtures, walls, original wall coverings, floors, and original floor coverings in the Pound.
- (f) The City and any employee, servant or agent of the City shall upon reasonable prior notice to the Society be entitled at any time during business hours to enter and examine the state of maintenance, repair, decoration and order of the Pound, all equipment and fixtures within the Pound and any improvements now or hereafter made to the Pound and the City may give notice to the Society requiring that the Society perform such maintenance or effect such repairs, replacements or decorations as may be found necessary from such examination. Provided always, in case of an emergency the City may enter the Pound for the foregoing purposes at any time and without prior notice to the Society.
- (g) The servants, agents and representatives of the City shall upon reasonable prior notice to the Society be entitled at any time during business hours to enter the Pound to make alterations or repairs as they shall deem necessary for the safety or preservation or proper administration or improvement of the Pound, or any premises adjoining the Pound, and at all times to perform the City's obligations hereunder. Provided always, in case of an emergency the

City may enter the Pound for the foregoing purposes at any time and without prior notice to the Society.

- (h) Subject to Paragraph 7.28, the City shall repair the structure, any perimeter wall, the floor or the roof of the Pound building, and the fire-protection system, the heating, ventilating, air-conditioning systems, normal wear and tear and damage by insured hazards only excepted; provided always, however, the City shall not be responsible for any injury or damage to Society Fixtures and Equipment, or other property of the Society or others, or any consequential damage of any nature or kind whatsoever caused by any failure to repair as aforesaid.

7.28 **Substantial Destruction of the Pound:** In the event of destruction of the Pound building, or damage to fifty per cent or more of the floor area of the Pound building, this Agreement may be terminated at the option of the City by the City giving to the Society within ninety days after the occurrence of such damage to or destruction of the Pound building notice in writing of the termination of this Agreement and thereupon all payments pursuant to this Agreement shall be apportioned and paid to the date of termination and the Society shall immediately upon receipt of such notice make any payment required and deliver up possession of the Pound to the City. Provided, however, that such termination shall not affect the obligations of the parties arising or existing prior to the date such notice of termination is given.

7.29 **Responsibility for Disappearance or Damage:** The Pound including, without limitation, the City Fixtures and Equipment, shall at all times be under the care, custody and control of the Society and the Society shall be responsible for all disappearance or damage thereto howsoever arising, save and except only disappearance or damage caused solely by the willful act or

by the negligence of the City, its employees, agents or contractors.

- 7.30 **Business Taxes and Fees:** The Society shall pay promptly for all gas, other fuel, electricity and water consumed by the operations of the Society at the Pound. The Society shall also pay promptly for all business taxes, licence fees, and all other charges, taxes, fees and rates levied or assessed on or in respect of or in relation to the business carried on by the Society at the Pound, or in respect of any fixtures, machinery, equipment or apparatus installed at the Pound by the Society. The City will supply the telephones referred to in the City Fixtures and Equipment and will pay the regular monthly telephone charges for such telephones, however the Society will pay for all long distance charges incurred by them in respect of such telephone service.
- 7.31 **Permits and Licenses:** The Society will obtain, pay for and maintain in good standing all necessary and required permits, licenses and similar authorizations as and when required for the operation and maintenance of the Pound and the provision of the services of a Poundkeeper or the provision of services and the performance of its obligations in accordance with this Agreement, as well as when required for the provision of the additional services in connection with the operation of a traditional SPCA animal shelter at the Pound. The Society will at all times comply with and observe all terms and conditions of all such permits, licenses and authorizations.
- 7.32 **Compliance with Laws:** The Society will comply with and observe all applicable laws and regulations of any federal, provincial or municipal government or authority, including without limitation all laws, regulations and standards with respect to the operation and maintenance of the Pound and the provision of the services of a Poundkeeper and the operation of a traditional SPCA animal shelter at the Pound. Without limiting the

generality of the foregoing, laws and regulations with respect to fire, safety, the environment, and employment practices and standards.

PART 8. LICENCE TO OCCUPY

8.01 **Grant of Licence to Occupy:** The City shall permit the Society to occupy the Pound on the terms and conditions set forth in Schedule A during the Term of this Agreement.

8.02 **Termination of Licence:** Notwithstanding the preceding Paragraph, if this Agreement is terminated as herein provided, or expires and is not renewed, the Licence to Occupy the Premises will thereupon terminate.

PART 9. UTILITIES

9.01 **Interruptions:** The City does not warrant that the Pound, access to the Pound, or any public or private utility service or similar facilities provided at the Pound, will be free from interruptions caused or required by maintenance, repair, renewal, modification, strike, lockout or other labour dispute, civil disobedience or violence, inability to procure materials, failure of electricity or other utilities, riot, insurrection, war, acts of God, inclement weather or other cause or causes beyond the City's reasonable control, and no such interruption shall give the Society the right to terminate this Agreement, nor render the City liable in damages to the Society, provided that the City shall take all reasonable steps to remove the cause of such interruption.

9.02 **Repair and Maintenance:** Repairs and maintenance of the Pound shall be performed by or on behalf the Society at its own cost, in a good and workmanlike manner and to the same extent as a prudent owner would do. Provided however, the cost of such repairs or maintenance incurred by the Society arising solely out of a willful or negligent act of the City, will be paid by the City to the Society on demand and will be based on the Society's

direct costs of labour, materials and contracts.

9.03 **Waste Removal:** The Society will remove and dispose of animal carcasses and other waste materials from the Pound on a regular basis in accordance with all applicable laws and regulations.

9.04 **Pest Control:** The Society shall provide rodent control and pest extermination at the Pound as a prudent owner of a facility such as the Pound would do.

PART 10. INSURANCE

10.01 City Insurance:

(a) The City may, at its own cost during the term of this Agreement, place and maintain property damage insurance covering the Pound the City Fixtures and Equipment against fire and such other perils as the City may consider necessary or desirable. The said insurance shall be placed with such insurers and on such terms and conditions, including limits of liability and deductibles as the City may determine. Notwithstanding the foregoing, the City will have the option to self-insure for any of the occurrences or forms of insurance contemplated in this Paragraph.

(b) Notwithstanding the foregoing:

(i) the Society is not relieved of any liability arising from or contributed to by its negligence or its willful acts or omissions;

(ii) no insurable interest or other benefit (including an implied waiver of subrogation from the City's insurers) is conferred upon the Society under the City's insurance policies; and

(iii) the Society has no right to receive proceeds from the City's insurance policies.

10.02 **Society Insurance:**

(a) The Society, at its own cost during the term of this Agreement, shall provide, maintain and pay for the following insurance which shall be placed with such company or companies and in such form and amounts and with such deductibles as may be acceptable to the City:

(i) Comprehensive General Liability Insurance protecting the City, the Society, and their respective servants, agents, employees, officers, directors, councillors, volunteers and members against damages arising from personal injury (including death) and claims for property damage which may arise out of the operation and maintenance of the Pound and the provision of the services of a Poundkeeper pursuant to this Agreement, or which may arise out of the use and occupancy of the Pound by the Society, or its servants, agents, employees, officers, directors, volunteers or members under this Agreement. Such insurance shall be for an amount acceptable to the City and shall, in any event, be not less than FIVE MILLION (\$5,000,000.00) DOLLARS, inclusive of any one occurrence, and shall include a standard form of cross liability clause, and shall include an all risks Tenant's Legal Liability clause in an amount of not less than FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS. Such policy(s) of insurance as are required herein shall, without limitation, cover all liability arising out of complete operations; non-owned automobile liability, contingent employer's liability and liability assumed by the Society in connection with and applicable to this Agreement.

(ii) Automobile Liability Insurance on all licensed vehicles

owned by or leased to the Society and used in connection with the operation and maintenance of the Pound, insuring against damages arising from bodily injury (including death) and from claims for property damage arising out of their use in the operations of the Society, and its respective agents, employees, officers, directors, volunteers or members under this Agreement. Such insurance shall be for an amount acceptable to the City and shall, in any event, be not less than TWO MILLION (\$2,000,000.00) DOLLARS, inclusive of any one accident.

(iii) Property insurance, on a replacement cost basis, covering loss or damage or theft in respect of Society Fixtures and Equipment and inventories and fixtures or improvements owned or leased by the Society, on such terms and conditions as the City may reasonably approve.

- (b) The insurance policies which the Society is required to obtain shall:
- (i) provide that the insurance shall not be cancelled or materially changed in any way without the Insurer giving at least THIRTY (30) DAYS prior written notice to the City;
 - (ii) provide that City is an additional named insured in the policies (Comprehensive General Liability);
 - (iii) be with Insurers registered in and licensed to underwrite such insurance in the Province of British Columbia; and
 - (iv) be obtained by the Society at no expense to the City.
- (c) The Society may take out such additional insurance as the Society may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

- (d) The Society shall deliver to the City on or before the Commencement Date, and thereafter on each renewal of the insurance by the Society, and on the request of the City from time to time, confirmation of the foregoing insurance outlining all coverages in a Certificate of Insurance.
- (e) It is understood and agreed that the provision of the foregoing insurance coverage by the Society as required by this Agreement shall not limit the liability of the Society under the terms of this Agreement.
- (f) For good and valuable consideration, the Society does hereby release and relieve the City and those persons for whom the City is, in law, responsible, from liability and responsibility for, and waives its entire claim for recovery of, any loss or damage whatsoever arising out of or incident to, the occurrence of any of the perils covered by, or which would be covered by, the insurance policies which the Society is obligated to obtain and maintain in force under the terms of this Agreement.

PART 11. TERMINATION OF AGREEMENT

11.01 Termination on Default: This Agreement may be terminated by the City on immediate notice to the Society, as follows:

- (a) if at any time the Society defaults in the performance of any matter referred to in Paragraph 7.08;
- (b) subject to Paragraph 7.09, if at any time the Society fails to receive or take delivery of an animal delivered to the Pound by an Animal Control Officer;

- (c) if the Society defaults in the payment of any amount due and payable to the City hereunder and such default remains unremedied for a period of FIFTEEN (15) DAYS after notice or demand from the City;
- (d) if the Society defaults in the performance or observance of any other term or condition of this Agreement::
 - (i) and such default remains unremedied for a period of FIFTEEN (15) DAYS after notice from the City; or
 - (ii) if such default cannot reasonably be remedied within a period of FIFTEEN (15) DAYS after notice from the City, and the Society fails after notice from the City to immediately and diligently carry out steps to remedy such default in accordance with instructions from the City;
- (e) if the Society becomes bankrupt or insolvent, or takes the benefit of any act or law now or hereafter in force for bankrupt or insolvent debtors, or files any proposal or makes any assignment for the benefit of creditors, or if a receiver is appointed for all or a portion of the property of the Society, or if any step or proceeding is taken for the winding-up of the Society, or if the Society abandons or attempts or threatens to abandon the Pound or any part thereof, or if the Society removes any of the City Fixtures and Equipment from the Pound, or if the Society shall suffer or permit any of its right, title or interest under this Agreement or any of its property to be taken under any writ of execution or attachment order; or
- (f) if the Society is prevented or hindered from the operation and maintenance of the Pound and the provision of the services of a

Poundkeeper or providing other services at the time or times required by the City and in accordance with the terms and conditions of this Agreement due to any strike, lockout or other labour disturbance affecting the Society, notwithstanding that any such strike, lockout or labour disturbance may constitute an event of Force Majeure hereunder.

11.02 **City May Remedy Default:** If the Society defaults in the observance or performance of any term, condition or proviso which is required to be observed or performed by it hereunder and fails to remedy such default as required by this Agreement, the City shall be entitled, but not obligated, to take such steps as may be available to it to remedy such default, and the costs detailed in a written statement of costs, incurred by the City in connection therewith shall be paid by the Society to the City on demand.

11.03 **Termination on Damage:** This Agreement may be terminated by either party on immediate written notice to the other if the Pound is wholly or partially damaged or destroyed to the extent that the operations of the Society hereunder are totally suspended as a result thereof for a period in excess of THIRTY (30) DAYS; provided always that such termination (if any) shall be deemed to take effect as of the date such suspension commenced.

11.04 **Voluntary Termination:** Notwithstanding anything to the contrary herein contained, this Agreement may be terminated by either party effective on the last day of any month during the Term of this Agreement, PROVIDED that the party wishing to terminate this Agreement has given the to the other party prior written notice of its intention to terminate this Agreement effective on the last day of a specific month during the Term, and has delivered such notice to the other party not less than ONE HUNDRED AND EIGHTY (180) DAYS prior to such termination date.

11.05 **Consequences of Termination:** If this Agreement is terminated as herein provided, the following provisions shall apply:

- (a) all rights granted to the Society pursuant to this Agreement shall cease;
- (b) the Society shall cease forthwith the operation and maintenance of the Pound and the provision of the services of a Poundkeeper under this Agreement;
- (c) the Society shall surrender and forthwith vacate the Pound; provided however, that the Society shall within 24 hours thereafter remove all of the Society Fixtures and Equipment located thereon and shall immediately make good any damage occasioned thereby, and shall remove all animal carcasses and leave the Pound in a clean and sanitary condition as required under this Agreement;
- (d) the Society shall deliver to the City the Pound, including the City Fixtures and Equipment or equivalent replacements thereof permitted under this Agreement, in good repair and in a condition no worse than the condition thereof at the time of delivery to the Society, reasonable wear and tear excepted;
- (e) there shall be an accounting in regard to all amounts owing to the date of termination, and the Society shall pay to the City the amounts due to the City, and the City shall pay to the Society the amounts due to the Society, pursuant to this Agreement, within THIRTY (30) DAYS after the date of termination.

PART 12. INDEMNITY

12.01 **General Indemnity:** The Society hereby covenants and agrees to indemnify and save the City its councillors, directors, officers, employees, successors, assigns and authorized representatives and each of them harmless from and against any liability, obligation, loss or damage whatsoever arising out of, under or pursuant to any incorrectness in, or breach of, or default under, any representation or warranty or covenant or obligation of the Society given to the City in this Agreement, or any permission given by the City to Society in this Agreement, and in connection with the foregoing, all actions, causes of action, costs, claims, interest, penalties, demands and expenses, including without restricting the generality of the foregoing, all expenses actually incurred whether fees for lawyers or attorneys, fees for reports or opinions of experts of all types and all expenses of such lawyers, attorneys and experts in connection with any of the foregoing.

12.02 **Society to Indemnify the City:** Without limiting the generality of the foregoing, the Society hereby agrees to indemnify and save harmless the City and its councillors, directors, officers, employees, successors, assigns and authorized representatives and each of them from and against any and all losses whether directly or vicariously caused or incurred, arising or resulting from:

- (a) any operation or maintenance of a traditional SPCA animal shelter at the Pound, or any provision of the services of a traditional SPCA animal shelter at the Pound, as permitted by this Agreement; or
- (b) any negligent operation or maintenance of the Pound or any negligent provision of the services of a Poundkeeper pursuant to this Agreement;

by the Society, and its servants, agents, employees, officers, directors, volunteers or members. Provided always, the Society shall not be required

to indemnify the City as set forth in this Paragraph in respect of liability arising solely out of the negligent acts of the City, its successors, assigns or authorized representatives.

12.03 **City to Indemnify the Society:** The City hereby agrees to indemnify and save harmless the Society and its servants, agents, employees, officers, directors, volunteers, members, successors, and permitted assigns and each of them from and against any and all losses whether directly or vicariously caused or incurred, arising or resulting from:

(a) any negligent operation or maintenance of the Pound or any negligent provision of the services of a Poundkeeper pursuant to this Agreement;

by the City, and its councillors, directors, officers, employees, successors, assigns and authorized representatives. Provided always, the City shall not be required to indemnify the Society as set forth in this Paragraph in respect of liability arising solely out of the negligent acts of the Society or its servants, agents, employees, officers, directors, volunteers, members, successors or permitted assigns.

12.04 **Other Remedies Preserved:** The indemnity provisions set forth in this Agreement shall not be in lieu of or in substitution for any other rights or remedies at law or in equity which the City may have for the enforcement of its rights under this Agreement and its remedies for any breach of any representation, warranty or covenant or obligation contained in this Agreement, or arising or resulting from any operation or maintenance of a traditional SPCA animal shelter at the Pound, or any provision of the services of a traditional SPCA animal shelter at the Pound as permitted by this Agreement, or arising or resulting from any negligent operation or maintenance of the Pound or any negligent provision of the services of a

Poundkeeper pursuant to this Agreement, all of which other rights or remedies at law or in equity the City hereby expressly reserves unto itself.

PART 13. GENERAL CONDITIONS

13.01 **Expiration of Term:** On the expiration of the Term by effluxion of time, the provisions of Paragraph 11.05 shall apply.

13.02 **Force Majeure:** Neither party shall be in default or be liable to the other party with respect to the failure to observe or perform of any of its obligations hereunder if and for as long as performance or observance of such obligations is prevented or delayed by an event of Force Majeure; provided however, that an event of Force Majeure shall not excuse any failure by the Society to pay any amount due and payable to the City hereunder. Neither party shall have any claim against the other for any loss, damage, cost or expense suffered or incurred by the other party as a result of any event of Force Majeure.

13.03 **No Assignment or Subcontracting:** The City entered into this Agreement based upon the representations of the Society herein contained and the City's assessment of the Society's capability to observe and perform the terms and conditions herein contained and accordingly the whole or any part of the obligations of the Society pursuant to this Agreement cannot be assigned or subcontracted or sublicensed by the Society without the prior written consent of the City, which consent may be withheld by the City for any reason it deems sufficient:

(a) The Society shall not during the Term assign this Agreement or any part hereof, nor grant any subcontract, concession or licence within or with respect to the Pound or with respect to any of the obligations of Society hereunder, without in each case obtaining the prior written consent of the City;

- (b) In no event shall any assignment, subcontract, concession or licence to which the City may have consented release or relieve the Society from its obligations to observe and perform all the terms, covenants and conditions of this Agreement;
- (c) No consent by the City to any assignment, subcontracting, concession or licence shall be construed to mean that the City has consented or will consent to any further assignment, subcontracting, concession or licence;
- (d) No assignment, subcontracting, concession or licence shall be valid unless within TEN (10) DAYS after the City's consent thereto the Society delivers to the City:
 - (i) a duplicate original of such assignment, subcontract, concession or licence duly executed by the parties thereto; and
 - (ii) an instrument duly executed by the assignee, subcontractor, concessionaire, or licensee, as the case may be, in form satisfactory to the City wherein such assignee, subcontractor, concessionaire, or licensee, as the case may be, assumes with the Society its obligations to observe and perform all the terms, covenants and conditions of this Agreement on its part to be performed.
- (e) In the event of any assignment, subcontracting, concession or licence to which the City has not consented as herein set forth, the City may in its sole discretion terminate this Agreement, or take such other action or seek such other remedies to which it may be entitled at law

or in equity.

13.04 **No Agency:** Nothing in this Agreement shall constitute or be deemed to constitute the Society or any of its directors, officers, employees, volunteers or agents as a partner, joint venturer or agent of the City. Persons engaged by the Society for the operation and maintenance of the Pound and the provision of the services of a Poundkeeper or the operations of the Society hereunder or the performance of the obligations of the Society under this Agreement shall at all times be and be deemed to be employees, volunteers, agents or contractors of the Society and not employees, volunteers, agents or contractors of the City. The Society shall at all times be and be deemed to be an independent contractor to the City.

13.05 **Currency:** All amounts of money referred to or expressed herein and all amounts payable by the Society to the City under this Agreement are expressed and shall be paid in lawful money of Canada.

13.06 **Notices:** All notices, requests, consents and approvals ("notices") required or permitted to be given hereunder shall be in writing and may be delivered personally or by email transmission or sent by prepaid registered mail to the address or emailed, or to such other address or fax number as any party may designate from time to time by notice to the other party. Any notice delivered personally to the person designated below shall be deemed to have been given and received at the time of delivery. Any notice given by email transmission shall be deemed to have been given and received upon completion of the transmission. Any notice given by prepaid registered mail shall be deemed to have been given and received on the fifth (5th) day following the date of mailing, provided however, if there shall exist between the date of mailing and actual receipt a mail strike or labour disturbance which would affect the delivery of mail, the notice shall be deemed to be given and received at the time of actual delivery. Addresses and fax numbers

for notices are:

To CITY:

Manager, Bylaw Services
CITY OF PRINCE GEORGE
1100 Patricia Boulevard
Prince George, B.C. V2L 3V9
Fax: (250) 561-7718

To Society:

THE BRITISH COLUMBIA SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS
1245 East 7th Avenue, Vancouver, British Columbia,
V5T 1R1, Attention: Chief Operations Officer; and
its NORTH CARIBOO DISTRICT BRANCH
(Prince George), P.O. Box 2388, Prince George, B.C.
V2N 2S6, Attention: Branch Manager
Fax: (604) 681-7022

- 13.07 **City Contact:** Whenever the Society wishes to contact an authorized representative of the City in person, the Society may contact the Manager of Bylaw Services of the City or the person designated by the Manager of Bylaw Services of the City and notified by the City to the Society in writing from time to time.
- 13.08 **Society Contact:** Whenever the City wishes to contact an authorized representative of the Society in person, the City may contact the Chief Operations Officer of the Society, the CEO of the Society, or the person designated by the President in writing to the City from time to time.
- 13.09 **Severability:** If any provision of this Agreement is declared or held to be invalid, unenforceable or illegal, and that provision is not essential to the purposes of this Agreement such that its severance would frustrate this Agreement, such invalidity, unenforceability or illegality shall not affect the validity and enforceability and legality of all other provisions of this

Agreement, it being the intention of the parties that this Agreement would in any event have been executed and delivered without any such provision which may be held or declared to be invalid, unenforceable, or illegal.

13.10 **Time:** Time shall be of the essence of this Agreement and of each of the terms and conditions hereof.

13.11 **Non-Waiver:** No condoning, excusing, or waiver by any party of any breach or non-observance by the other party of any term or condition of this Agreement shall operate as or be construed to be a waiver of any breach or non-observance of any other provision of this Agreement or of any continuing or subsequent breach or non-observance of any such provision.

13.12 **Agreement Costs:** Each party shall bear their own expenses, including without limitation legal fees and disbursements, in connection with the preparation, execution and delivery of this Agreement.

13.13 **Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia which shall be deemed to be the proper law hereof. The Society hereby irrevocably attorns to the jurisdiction of the courts of the Province of British Columbia in respect of any and every action, cause of action, suit or proceeding which may at any time or from time to time be brought by the City against the Society, or brought by the Society against the City, under or in relation to this Agreement.

13.14 **Representations and Warranties:** The Society represents and warrants that:

- (a) it has all necessary corporate power and capacity and has complied with all applicable laws of the Province of British Columbia and of

Canada required to enable it to enter into and perform its obligations under this Agreement; and

- (b) it will at all times during the Term maintain all required registrations in good standing and comply with all terms, conditions and undertakings of any required approvals.

13.15 **Subordination:** The Society will, at the request of the City, execute and deliver an agreement or instrument in the form required by the City subordinating all of its right, title and interest in and to the Pound and this Agreement to any mortgage, charge or other encumbrance granted or to be granted by the City to any person, firm or corporation for the purpose of securing any loan or financing facility obtained by the City in connection with its operations at the Pound or elsewhere; provided however that any such agreement or instrument shall include a non-disturbance agreement in favour of the Society to the effect that the Society may continue to enjoy the rights and benefits accruing to it under this Agreement, if and for so long as it is not in default hereunder.

13.16 **Modifications or Amendments:** Except as herein otherwise provided, no subsequent alteration, amendment, changes or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties. At the request of the City, the Society shall execute and deliver a modification agreement reflecting the changes in this Agreement resulting from any alteration, amendment, change or addition agreed to between the parties.

13.17 **Entire Agreement:** This Agreement, and the Schedules to this Agreement, as amended from time to time, shall constitute the entire understanding and agreement between the Society and the City with respect to the matters described herein, and shall supersede all prior arrangements or other letters

or discussions between the parties respecting the operation and maintenance of the Pound and the provision of the services of a Poundkeeper and all other matters covered by this Agreement.

13.18 **Incorporation by Reference:** The Schedules and amendments thereto from time to time relating to this Agreement are hereby incorporated into the terms and conditions of this Agreement by this reference thereto, and any breach of the matters set forth in such Schedules or amendments from time to time, shall be deemed to be a breach of this Agreement.

13.19 **Enurement:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and the assigns of the City and the permitted assigns of the Society.

13.20 **Headings:** The headings to the Parts, Paragraphs and Subparagraphs have been inserted in this Agreement for ease of reference only and shall not be used to enlarge, alter, modify, or otherwise affect the meaning of the Part, Paragraph or Subparagraph to which they refer.

13.21 **Effective Date:** Once signed by all of the parties hereto this Agreement shall take effect as of the 1st day of January 2020 regardless of the date this Agreement was signed by all of the parties hereto.

IN WITNESS WHEREOF the parties have duly executed this Agreement in the manner and on the dates hereinafter set forth.

SIGNED ON BEHALF OF)
CITY OF PRINCE GEORGE)
this ___ day of _____ 2021)
by:)
_____)
Walter Babicz)
Acting City Manager)

THE CORPORATE SEAL of)
THE BRITISH COLUMBIA SOCIETY)
FOR THE PREVENTION OF CRUELTY)
TO ANIMALS was hereunto affixed)
this ___ day of _____ 2021)
affixed in the presence of:)
_____)
Authorized Signatory)
_____)
Print Name & Office or Title)

EXECUTED ON BEHALF OF)
NORTH CARIBOO DISTRICT BRANCH)
(Prince George) of THE BRITISH)
COLUMBIA SOCIETY FOR THE)
PREVENTION OF CRUELTY TO)
ANIMALS this ___ day of _____ 2021)
in the presence of:)
_____)
Signature of Witness)
_____)
Print Name of Witness)
_____)
Print Address of Witness)
_____)
Print Occupation of Witness)

NORTH CARIBOO DISTRICT BRANCH
(Prince George) of THE SOCIETY FOR
THE PREVENTION OF CRUELTY TO
ANIMALS, Per:

Authorized Signatory

Print Name & Office or Title

INDEX OF SCHEDULES

SCHEDULE A	License to Occupy
SCHEDULE B	Payment of Contract Price

SCHEDULE A

TERMS AND CONDITIONS OF LICENCE TO OCCUPY POUND (Agreement Paragraph 8.01)

1. **Commencement Date:** The commencement date shall be the 1st day of January 2020.
2. **Alterations:** The Society may at any time and from time to time at its expense, install trade fixtures and equipment, and make such changes, alterations, additions and improvements in and to the Pound, all as will in the judgment of the Society better adapt the Pound for the purposes for which the same are permitted to be used hereunder; provided, however, that no changes, alterations, additions or improvements to the Pound shall be made without the prior written consent of the City, and without the use of contractors or other qualified workmen to be approved by the City. All changes, alterations, additions, and improvements shall comply with all applicable statutes, regulations or by-laws or any municipal, provincial or other governmental authority.
3. **Repairs:** The Society shall at all times during the term of this Licence to Occupy at its own cost and expense repair, maintain and keep the Pound in good order and repair, as a careful owner would do, save and except reasonable wear and tear, and the Society shall perform such maintenance, effect such repairs and replacements and decorate at its own cost and expense as and when necessary or reasonably required so to do by the City.
4. **Yard Maintenance:** Notwithstanding the generality of the foregoing, the City will be responsible for cutting the lawns and trimming the hedges at the Pound.
5. **Snow Clearing:** The City will use its reasonable best efforts to clear snow from the driveway at the Pound from time to time, but the Society shall be responsible for all other snow clearing at the Pound.
6. **Notice to Repair:** The City and any employee, servant or agent of the City shall be entitled at any reasonable time during business hours and during any emergency from time to time to enter any and all parts of the Pound and examine the state of maintenance, repair, and order of the Pound, all equipment and fixtures belonging to the City within the Pound, all equipment and fixtures belonging to the Society within the Pound, and any improvements now or hereafter made by the City or the Society to the Pound, and the City may give notice to the Society requiring that the Society perform such maintenance or effect such repairs or replacements as may be found necessary from such examination.
7. **City Right of Entry:** The servants, agents and representatives of the City shall have the right to enter the Pound at all times during regular business hours to make alterations or repairs as they shall deem necessary for the safety or preservation or proper administration or improvement of the Pound or any premises adjoining the Pound.

8. **Damage to Pound:** In the event of damage to or destruction of the Pound so that the Pound is wholly or partially unfit for the business of the Society this Licence to Occupy the Pound shall according to the nature and extent of the damage sustained, be suspended until the Pound shall have been rebuilt or made fit for the business of the Society, or until this Licence to Occupy is terminated by the City.
9. **Substantial Damage to Pound:** In the event of destruction of the Pound or substantial damage (as determined by the City in its sole discretion) to the Pound, this Agreement may be terminated at the option of the City by the City giving to the Society within THIRTY (30) DAYS after the occurrence of such damage to or destruction of the Pound notice in writing of the termination of this Agreement and thereupon the Society shall immediately upon receipt of such notice deliver up possession of the Pound to the City; provided, however, that such termination shall not affect the obligations of the parties arising or existing prior to the date such notice of termination is given.
10. **Title to Improvements:** The Society agrees that at the expiration or earlier termination of this Licence to Occupy all changes, alterations, additions and improvements made to or installed upon or in the Pound whether made pursuant to this Agreement or otherwise and which in any manner are attached in, to, on or under the Pound, other than Society Fixtures and Equipment, shall remain upon and be surrendered to the City with the Pound as a part thereof, without disturbance, molestation or injury and shall be and become the absolute property of the City without any payment or indemnity by the City or any third party to the Society, unless the City shall by notice in writing require the Society to remove the same, in which event the Society shall restore the Pound to the state in which it was prior to commencing any of the Society's work as permitted under this Agreement and shall make good any damage or injury caused to the Pound or the Pound resulting from such installation or removal.
11. **Society Fixtures and Equipment:** The Society may, provided it is not in default under this Agreement, remove the Society Fixtures and Equipment. The Society shall make good any damage or injury caused to the Pound or to the Pound resulting from such removal.
12. **Consent:** The Society shall not make any repairs to any part of the Pound, nor make any improvements or place any attachments in or upon the Pound or on the parking areas, without the written consent of the City, failing which the Society will be held responsible for all ensuing costs and damages whether to remove such items or to effect repairs needed as a result of such acts.
13. **Liens:** The Society shall not permit, do, or cause anything to be done to the Pound at any time which would allow any lien, lis pendens, judgment or certificate of any court or any mortgage, charge or encumbrance of any nature whatsoever to be imposed or to remain upon the Pound. In the event of the registration of any lien or other encumbrance by a contractor or sub-contractor of the Society, the Society shall at its own expense immediately cause the same to be discharged, and if the Society shall not immediately discharge the lien whether by payment into Court or otherwise, the City may pay such lien and in such event the Society shall repay the amount so paid to the City upon demand. The City shall be entitled but shall not be obliged to post notices in the Pound to take advantage of any provision under the *Builders Lien Act* limiting the City's liability for improvements made to or installed upon the Pound.
14. **Conduct of Operations:** The Society shall not use or occupy the Pound or any part thereof for

any purpose other than the purpose of the operation and maintenance of the Pound and the provision of the services of a Poundkeeper, and the operation of a traditional SPCA animal shelter at the Pound, and uses customarily incidental thereto, or such other purposes, if any, as the City in its sole discretion may approve upon prior written request of the Society.

15. **Computer Terminal Operations:** The Society shall not use the computer terminals supplied by the City, or any other computer terminal, for any improper purpose. Without limiting the generality of the foregoing, the Society shall not use the computer terminals supplied by the City, or any other computer terminal, for any unauthorized entry into the computer systems of the City.
16. **Signs:** The Society will not erect or place or suffer to be erected or placed or maintain any signs of any nature or kind whatsoever on the Pound, nor place any attachments, decoration, signs or displays in or upon the Pound or on the parking areas, without first obtaining the City's written approval and consent in each instance. Further, and notwithstanding approval by the City, the Society shall ensure that any signs erected, placed or maintained by the Society comply in all respects at all times with all applicable bylaws of the City.
17. **Garbage Removal:** No debris, garbage, trash or refuse shall be placed or left in or upon any part of the Pound, but shall be removed from the Pound by the Society from time to time.
18. **Environmental Matters:** Except as specifically contemplated in this Agreement, the Society covenants not to produce on the Pound or allow to be brought into the Pound any toxic or hazardous substance or any substance which if it were to remain on or escape from the Pound would contaminate the Pound or any other property to which it came into contact.
19. **Society Damage:** The Society will not do or suffer any waste or damage, disfiguration or injury to the Pound or the City Fixtures and Equipment. In the event that damage, disfiguration or injury is caused to the Pound or the City Fixtures and Equipment by reason of any of the above acts, the Society shall forthwith repair the said damage, disfiguration or injury or pay to the City the cost of repairing the said damage, disfiguration or injury.
20. **Cleaning:** The Society shall at its sole cost and expense keep the Pound in a clean and sanitary condition in accordance with the laws of the City of Prince George and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officers of the City, other agencies having jurisdiction and the insurers of the City; in the event that the Society fails to comply with the foregoing provisions the City may rectify the situation and collect the expense for such work from the Society on demand with interest as set forth in this Agreement.

21. **Fire Extinguishers:** The City shall, at its own cost, supply and maintain at the Pound at all times during the term of this Agreement such fire extinguishers as may be prescribed from time to time for the Pound pursuant to any applicable statute, regulation, bylaw or rule or any municipal, provincial, federal or other government authority. Notwithstanding the foregoing, the cost of any private inspections of the fire extinguishers, and the cost to recharge any extinguishers as necessary, will be paid by the Society.
22. **Regulations:** The Society shall abide by and shall cause its servants, agents, employees, officers, directors, volunteers and members to abide by any and all rules and regulations which may from time to time be established by the City for the Pound.
23. **Location Change:** Nothing contained in this Licence to Occupy shall be construed so as to prevent the City from varying or altering the location or size of the Pound from time to time or from demolishing improvements or from erecting additional buildings or extending buildings, and without limiting the foregoing the City shall have the unrestricted right to demolish buildings or construct additional buildings from time to time, add or change any building, and may alter the ingress and egress to the Pound, change the entrance and location of the Pound from time to time without in any way being responsible to the Society, provided only that the City shall at all times provide reasonable access to the Pound for the Society, its servants, agents, employees, officers, directors, volunteers, members and customers for the purposes set forth in this Agreement.
24. **Surrender of Pound:** At the expiry of this Licence, or if this Licence is terminated by the City or the Society as herein provided, the Society will deliver to the City vacant possession of the Pound and the City Fixtures and Equipment, but not the Society Fixtures and Equipment, in the condition in which the Society is required to maintain the same pursuant to the Agreement.
25. **Conflict:** If there is any conflict or inconsistency between the Licence to Occupy the Pound as set out in this Schedule and the Agreement, the terms and conditions of the Agreement shall prevail.

SCHEDULE B

PAYMENT OF CONTRACT PRICE (Agreement Paragraph 4.01)

The Contract Price of **\$1,105,885.36** shall be paid in installments as follows:

(i)	Twelve (12) payments of \$17,692.75 each	=	\$213,313.00
(ii)	Twelve (12) payments of \$18,046.60 each	=	\$216,559.20
(iii)	Twelve (12) payments of \$18,407.54 each	=	\$220,890.48
(iv)	Twelve (12) payments of \$18,775.69 each	=	\$225,308.28
(v)	Twelve (12) payments of \$19,151.20 each	=	\$229,814.40
	TOTAL	=	<u>\$1,105,885.36</u>

The foregoing installment payments shall be paid by the City to the Society as follows:

PAY SECTION

1. for the period from January 1, 2020 to December 31, 2020: twelve (12) equal monthly installment payments of **\$17,692.75** each shall be paid not later than 20 days after the end of each month of that period;
2. for the period from January 1, 2021 to December 31, 2021: twelve (12) equal monthly installment payments of **\$18,046.60** each shall be paid not later than 20 days after the end of each month of that period;
3. for the period from January 1, 2022 to December 31, 2022: twelve (12) equal monthly installment payments of **\$18,407.54** each shall be paid not later than 20 days after the end of each month of that period;
4. for the period from January 1, 2023 to December 31, 2023: twelve (12) equal monthly installment payments of **\$18,775.69** each shall be paid not later than 20 days after the end of each month of that period;
5. for the period from January 1, 2024 to December 31, 2024: twelve (12) equal monthly installment payments of **\$19,151.20** each shall be paid not later than 20 days after the end of each month of that period
6. if there is a limited extension of the Term of this Agreement for one or more months during the period from January 1, 2025 to December 31, 2025 as set forth in Paragraph 3.04 of this Agreement: one (1) monthly installment payment of **\$19,151.20** for each such month of the limited extension shall be paid not later than 20 days after the end of each month of that limited extension.

BETWEEN:

CITY OF PRINCE GEORGE

OF THE FIRST PART

AND:

**THE BRITISH COLUMBIA SOCIETY FOR
THE PREVENTION OF CRUELTY TO ANIMALS and
its NORTH CARIBOO DISTRICT BRANCH (Prince
George)**

OF THE SECOND PART

**CITY OF PRINCE GEORGE
ANIMAL POUND
OPERATION & MAINTENANCE
AGREEMENT**
