

AGREEMENT

THIS AGREEMENT, made this 13th day of January, 2014, pursuant to the provisions of section 115 of the Agriculture and Markets Law, by and between the Town of Peru (the "Town"), a municipal corporation organized under the laws of the state of New York with offices at 3036 Main Street, Peru, New York 12972, party of the first part, and Elmore SPCA, a not-for-profit corporation duly organized and existing under the Not-For-Profit Corporation Law of the State of New York as an Incorporated Society for the Prevention of Cruelty to Animals (the "Society"), and having its office and principal place of business at P.O. Box 686, Peru, New York 12972.

WITNESSETH:

WHEREAS, the Society owns and operates a shelter for the care of dogs and the Town requires a facility suitable for such shelter and care, and

WHEREAS, the Town desires to utilize the services of the Society and access to said shelter,

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Society and the Town do hereby agree as follows:

1. The Society shall maintain a shelter for dogs seized within the Town by an authorized Dog Control Officer (DCO) in accordance with article 7 of the Agriculture and Markets Law. The Society's duties with respect to said dogs shall be performed at the cost and expense of the Society, and are as follows:

a. To properly shelter, care, feed and water such dogs for the minimum redemption period require by the Agriculture and Markets Law;

b. To make such dogs available for redemption by their owners for a period of time equal to or greater than the minimum redemption period, and to place "lost and found" ads in area newspapers attempting to locate their owners.

c. To make such dogs available for adoption for a period of time equal to or greater than the minimum redemption period if, at the end of the appropriate redemption period, said dog has not been redeemed by its owner.

d. To contact the Town DCO prior to releasing a dog to its owner, adopting out a dog or euthanizing a dog, so that the Town DCO can collect from such owner any fees, charges or outstanding fines or penalties owed by such owner to the Town.

e. To provide veterinary services for said dogs if at any time while in the care and possession of the Society the dog appears seriously injured or ill and in need of emergency measures. As to any dogs that appear seriously injured or ill and in need of emergency measures at the time the Town delivers said dogs to the Society for impoundment, said dogs shall be accepted for impoundment only upon the condition that the Town shall reimburse the Society for all veterinary and other services provided said dogs due to said condition. However, if at the time the dog is delivered to the Society it does not appear to be seriously injured or ill and in need of emergency measures a rebuttable presumption shall arise that the dog was delivered to the Society in good health and not in need of veterinary services. The Town shall only be responsible for the cost of veterinary services for animals which were delivered to the Society which appeared seriously injured or ill and in need of emergency measures.

f. To arrange for a veterinarian to euthanize any dog for which euthanization is necessary and legally authorized, and to arrange for the burial of any dogs so euthanized.

g. To prepare, retain, and make available to the Town complete and accurate records concerning the care and disposition of all dogs cared for by the shelter hereunder as well as any expenses incurred and any fees collected.

2. The Society shall not accept for impoundment any dogs that:

a. Are in need of veterinary services, except in accordance with paragraph 1(e), or

b. Are not accompanied by the appropriate DCO's seizure report.

3. The Society shall accept from the Town DCOs any homeless, stray, abandoned, neglected, abused or any other dogs which are otherwise picked up by the DCOs in the Town. The Society will allow the DCOs of the Town access to its shelter 24 hours a day.

4. In consideration for the above-mentioned services, the Town shall remit to the Society the sum of \$6,474.00 for the calendar year 2014.

5. Nothing contained herein shall limit the Society's rights under section 183 of the Lien Law, or pursuant to section 373 of the Agriculture and Markets Law, or as derived from any other general or special law, or by means of any civil action or proceeding, to recover from the owner thereof any necessary or reasonable costs and expenses incurred by the Society in providing pound and shelter for any Town dogs.

Nothing contained herein shall limit the Town's rights under applicable provisions of the law, or by means of any civil action or proceeding, to recover from the owner

of any dog delivered by the Town to the Society's shelter any fees, charges or outstanding fines or penalties owed by such owner to the Town.

Nothing herein shall obligate the Town to deliver to the Society any minimum number of dogs or all of the dogs seized in the Town by the Town DCO's.

6. The term of this Agreement is from January 1, 2014 through December 31, 2014, unless earlier terminated pursuant to the provisions of paragraph 8.

7. The Society shall not commence services under this contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Town.

a. Compensation Insurance. The Society shall take out and maintain during the life of this contract Workers' Compensation Insurance for its employees to be assigned to the work hereunder.

b. General Liability and Property Damage Insurance. The Society shall take out and maintain during the life of this contract such general liability and property damage insurance as shall protect it from claims for damages for personal injury, as well as from claims for property damage which may arise from operations under this contract. The amounts of such insurance shall be as follows:

i. General Liability Insurance in an amount not less than \$250,000.00 for injuries, including wrongful death to any one person and subject to the same limit for each person in an amount not less than \$500,000.00 on account of any one occurrence.

ii. Property Damage Insurance in an amount not less than \$250,000.00 for damage on account of all occurrences.

iii. The Society shall furnish the above insurances to the Town and shall also name the Town as an additional named insured in said policies.

c. Any incident involving a dog delivered by the DCO to the Society shall be reported to the office of the Supervisor of the Town as soon as possible and not later than 24 hours from the time of such incident. A detailed written report must be submitted to the Town as soon thereafter as possible and not later than three (3) days after the date of such incident.

8. The Town shall have the right to cease performing (except for payment for past services rendered) or terminate the contract immediately if:

a. The Society is adjudged bankrupt or makes an assignment for the benefit of creditors; or

b. A receiver or liquidator is appointed for the Society or for any of its property and is not dismissed within twenty (20) days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said twenty (20) days; or

c. The Society fails or refuses to comply with all applicable laws or ordinances; or

d. The Society is guilty of a substantial violation of any provision of this contract;

e. In any event, the Town, without prejudice to any other rights or remedy it may have, may by thirty (30) days' written notice to the Society, terminate this Agreement.

9. a. The Society shall have the right to cease performing or terminate the contract if the Town is guilty of a substantial violation of any provisions of this Contract;

b. In any event, the Society, without prejudice to any other rights or remedy it may have may, by thirty (30) days written notice to the Town, terminate this Agreement.

c. If the Society terminates the contract before the end of its term it shall reimburse, pro rata, the Town any unused portion of any amounts paid to the Society pursuant to paragraph "4" hereto based upon the number of days remaining in the term of the contract. For instance, if the contract is terminated effective November 30, 2014, the Society shall reimburse the Town 31/365's of any amounts previously paid to it under paragraph "4" hereto.

10. It is hereby mutually covenanted and agreed that the relation of the Society to the services to be performed by it under this Contract shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said services, whether or not the Society, its agents, or employees have been negligent. The Society shall hold and keep the Town free and discharged of and from any and all responsibility and liability of any sort or kind. The Society shall assume all responsibility for risks or casualties of every description, for loss or injury to persons or property arising out of the nature of the services, from the action of the elements, or from any unforeseen or unusual difficulty. The Society shall assume all blame, loss and responsibility of any nature by reason of neglect or violation of any federal, state, county or local laws, regulations or ordinances.

11. The Society agrees to defend, indemnify and save the Town, its officers, agents and employees, harmless from any and all liability imposed on the Town, its officers, agents and/or employees arising from the negligence, active or passive, of the Society.

12. In accordance with the provisions of section 109 of the General Municipal Law, the Society is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

13. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this Contract shall be physically amended forthwith to make such insertion. In particular, the Society shall, among other things, fully comply with:

- a. Labor Law section 220-e and Executive Law sections 291 to 299 and the Civil Rights Law relating to prohibition against discrimination and providing equal opportunity.
- b. Affirmative action as required by the Labor Law.

14. The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town of Peru, at a meeting thereof held on January 13, 2014. Peter Glushko, Supervisor of the Town, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Town. The Society represents that the officer of the instrument and enter into such an agreement on behalf of the Society. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk.

15. Any and all notices and payments required hereunder shall be addressed as follows, or to such other address as may hereafter be designated as follows, or to such other address as may hereafter be designated in writing by either party hereto:

To: Town of Peru
3036 Main Street
Peru, NY 12972

To: Elmore SPCA, Inc.
P.O. Box 686
Peru, NY 12972

16. No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

17. This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

18. This Agreement is governed by the laws of the state of New York.

IN WITNESS WHEREOF, the Town of Peru has caused its corporate seal to be affixed hereto and these presents to be signed by Peter Glushko, its Supervisor, duly authorized to do so, and to be attested to by Kathleen Flynn, Clerk of the Town of Peru, and the Society has caused its corporate seal to be affixed hereto and these presents to be signed by its President, the day and year first above written.

(Seal of the Town of Peru)

Town of Peru

By _____
Peter Glushko, Supervisor

Attested: _____
Kathleen Flynn
Clerk, Town of Peru

(Seal of Society)

Elmore SPCA, Inc.

By _____
President