

**FACILITY SHARING AGREEMENT
REGIONAL ANIMAL CONTROL FACILITY**

WHEREAS, General Statutes §§7-148cc establishes a process wherein municipalities may develop and implement interlocal agreements to jointly perform any function that each municipality may perform in accordance with state and local law; and

WHEREAS, the exchange, furnishing or providing of municipal facilities and equipment by one or more municipalities for their joint use has been found to be of benefit to all participating municipalities, both in making more facilities and equipment available and in reducing the cost of operating such facilities and using such equipment; and

WHEREAS, to meet their common need for animal control facilities, the towns of South Windsor, Manchester and East Hartford ("the Participating Municipalities") desire to enter into a Facility Sharing Agreement for the creation and ongoing maintenance of a Regional Animal Control Facility (the "Facility") to be located in the Town of South Windsor on land South Windsor owns; and

WHEREAS, operation and maintenance of the Facility is well suited to joint operation by the Participating Municipalities because each individually has the need for such a facility; and

WHEREAS, the Facility will be built and equipped through funding from the State of Connecticut as part of the Regional Performance Incentive Grant Program, administered by the Capitol Region Council of Governments, which program is intended to foster and enhance joint provisions of municipal services across town borders.

NOW, THEREFORE, to accomplish the goal of operating and maintaining the Facility across town borders and for the benefit of the Participating Municipalities, each hereby adopts this Regional Animal Control Facility Agreement ("Agreement") according to the following terms:

1. **OWNER/OPERATOR**: The Participating Municipalities hereby designate the Town of South Windsor as the owner and operator of the Facility, which exists at 124 Sullivan Avenue, South Windsor, on land owned by the Town of South Windsor.

2. **GOVERNING BOARD**: The Participating Municipalities shall establish a Governing Board to accomplish the purposes of this Agreement. The Governing Board shall have the authority to interpret this Agreement consistent with the purposes stated herein and, by majority vote, will be the arbiter of any disagreements among the Participating Municipalities relative to any aspect of this Agreement. Notwithstanding the foregoing, should the Governing Board be unable or unwilling to interpret this Agreement by majority vote, the dispute resolution provisions of paragraph 7 shall apply.

Consistent with their respective charters and/or ordinances, the Chief Executive Officer of each Participating Municipality shall designate one member of the Governing Board and each member designated shall have one vote. The qualifications, terms of office and compensation, if any, of such member shall be proscribed by the Chief Executive Officer of the appointing Participating Municipality.

The Governing Board shall have the authority to adopt rules with respect to the use and maintenance of the Facility and the prompt payment of all fees and costs by each participant as it deems necessary for the safe and sanitary operation of the Facility and to administrate in accordance with the terms of this Agreement.

3. **GENERAL TERMS:** In addition to the foregoing, the Governing Board shall oversee compliance with the following terms of this Agreement:

- a. Location: The Facility shall be located in the Town of South Windsor and the Town of South Windsor shall at all times and for all purposes remain the owner of the land and the building housing the Facility.
- b. Maintenance, Capital Projects and Repairs: The physical plant of the Facility shall be operated and maintained by the Town of South Windsor. In addition, the Town of South Windsor will be responsible for overseeing future capital projects and major repairs as funded through the capital account described in Exhibit ____ hereto.

The Town of South Windsor will annually evaluate the Facility and any equipment acquired under this Agreement and make recommendations to the Governing Board regarding necessary maintenance, capital projects and major repairs.

- c. Administration: Administrative functions (paying bills, ordering supplies, etc.) shall be conducted by one or more of the Participating Municipalities, as designated by the Governing Board. Said Participating Municipality shall be deemed the "Administrative Manager" of the Facility and will be paid an administrative fee as set forth in the annual budget.

The Administrative Manager shall also be responsible for record keeping, including but not limited to, expenses and income data and tracking the number and length of stay of all animals impounded by each Participating Municipality. Each Participating Municipality shall, at least quarterly, submit its state-mandated monthly impoundment reports to the Administrative Manager for this purpose.

- d. Annual Budget and Annual Expenses: The Annual Budget shall be set in accordance with the terms and conditions set forth on Exhibit ____ hereto. Said Annual Budget will include the Annual Expenses and Administrative Fee described on Exhibit ____ and any other costs or expenses approved by the Governing Board.

- e. **Member Payments:** Annual Expenses shall be shared among Participating Municipalities in accordance with the formula and terms set forth on Exhibit hereto.
- f. **Scheduling Use:** Schedules for the use of the Facility will be managed by the Town of South Windsor. Any scheduling disputes will be resolved by the Governing Board.
- g. **Municipal Participation:** The Agreement will remain in force as long as there are two remaining Participating Municipalities.
- h. **Property Insurance:** The Facility and equipment will be covered under an insurance policy providing property coverage in limits acceptable to the Governing Board. The cost of said policy shall be part of the Annual Budget. If the Facility or any equipment housed in it is damaged through the negligence of any Participating Municipality's own personnel, any deductible charged will be paid for by the Participating Municipality responsible for the damage.

4. **TERM OF AGREEMENT:** This agreement shall remain in effect for ten (10) years, with the first year beginning on the Effective Date of _____ and the last year expiring on _____. In accordance with law or local ordinance. The Agreement shall automatically renew for successive terms of five (5) additional years unless all but one Participating Municipality provides a written notice to the other of its election not to renew the Agreement for another five (5) years. Such notice must be provided at least thirty (30) days prior to the scheduled expiration of the original or any renewal term of the Agreement. In no event shall the Agreement extend beyond forty (40) years from the Effective Date.

5. **ADDITION OR REMOVAL OF PARTICIPATING MUNICIPALITIES:** The Participating Municipalities, through the Governing Board, may entertain offers for additional municipalities to participate in this Facility Sharing Agreement and may negotiate such contracts and fees with the proposed municipality as it deems appropriate. The Governing Board may add additional Participating Municipalities to the Facility Sharing Agreement by unanimous vote of the members of the Governing Board. If approved, the proposed municipality may become a Participating Municipality and shall execute an Addendum agreeing to be bound by any relevant terms of this Agreement and any other terms and conditions set forth by the Governing Board.

If any of the Participating Municipalities fail to meet their obligations under the terms of this Agreement and any Addendum thereto, any Participating Municipality in good standing may, through their respective member on the Governing Board, make written recommendation to the Governing Board that the defaulting municipality be involuntarily withdrawn from participation pursuant to Section 12 of this Agreement.

6. **LIABILITY AND HOLD HARMLESS:** Each Participating Municipality will be responsible for and insure itself against all claims, loss, damage, injury, and liability of every kind, nature, and description including, but not limited to, claims by third parties to

the extent that such liability arises out of a Participating Municipality's use of the Facility or a portion thereof. The Participating Municipalities agree that the Administrative Manager, the Town of South Windsor, and their respective Mayors, directors, officers, council members and employees shall be held harmless and shall be indemnified against any such loss, damage, injury, and liability of any kind, nature, or description including, but not limited to, claims by third parties that arise out of a Participating Municipality's use of the Facility or a portion thereof. Each Participating Municipality shall give prompt, written notice to the Administrative Manager and the Town of South Windsor of any claim made or any suit instituted, coming to its knowledge, which in any way, directly or indirectly, relates to the Facility or this Agreement.

7. DISPUTE RESOLUTION: Disputes arising from the operation or interpretation of this Agreement that cannot be resolved by a majority vote of the Governing Board pursuant to paragraph 2 hereof shall be submitted to mediation and arbitration to the American Arbitration Association (AAA) according to its commercial disputes rules and procedures.

8. GOVERNING LAW: This Agreement shall be governed by the law of the State of Connecticut. This Agreement is the product of informed negotiations between the parties hereto and each of the parties has had an opportunity to contribute to the drafting of this Agreement after consulting with legal counsel. Therefore, the language of this Agreement shall not be presumptively construed either in favor of or against any party.

9. AMENDMENTS: Unless expressly within the powers granted to the Governing Board, no provision of this Agreement may be modified, altered, or rescinded except by a writing duly executed by each Participating Municipality in accordance with state and local law.

10. DUE EXECUTION: Each Participating Municipality certifies that it has complied with all state and local laws as required to ratify this Agreement. The Participating Municipalities may separately execute counterpart originals of this Agreement (and any amendments thereto) which together shall be deemed to constitute one and the same agreement. Each Participating Municipality hereby authorizes its Town Manager to execute this Agreement.

11. WITHDRAWAL/TERMINATION: This Agreement is not transferable or assignable, in whole or in part, and any party may withdraw their participation in this Agreement, at any time upon sixty (60) days' written notice delivered or mailed to the members of the Governing Board, provided however, the notice of withdrawal does not release the Participating Municipality from its obligation to pay all fees accrued through the withdrawal date.

This Agreement shall terminate at the earlier of: (1) the date upon which all but one Participating Municipality has withdrawn; or (2) the date upon which all but one Participating Municipality has elected not to renew; or (3) forty (40) years from the Effective Date.

12. **DEFAULT/INVOLUNTARY WITHDRAWAL:** Any Participating Municipality that fails to meet its obligations as set forth in this Agreement or in any rule adopted by the Governing Board shall be deemed to be in default upon the mailing by the Governing Board of a written notice of default to the Participating Municipality's Chief Executive Officer. Issuance of the written notice of default must be approved by a two-thirds (2/3rds) vote of the Participating Municipalities that are not the subject of the notice of default. If such default is not cured within thirty (30) days of the mailing of the notice, the Participating Member may be involuntarily withdrawn upon a two-thirds (2/3rds) vote of the Participating Municipalities that are not the subject of the notice of default. Written notice of the date upon which any involuntary withdrawal will take effect shall be set by the Governing Board but shall not be less than 30 days from the date of mailing of the notice of involuntary withdrawal. All property and equipment of the involuntarily withdrawn municipality not removed from the Facility by the withdrawal date shall be deemed abandoned and may be disposed of as the Governing Board deems appropriate. An involuntary withdrawal does not release the withdrawn municipality from its obligation to pay all fees accrued through the withdrawal date nor does it modify or terminate this Agreement with respect to the remaining Participating Municipalities.

Notwithstanding anything herein to the contrary, the involuntarily withdrawn municipality may contest the notice of default within ten (10) days of receipt and submit such matter to mediation and arbitration to the American Arbitration Association (AAA) according to its commercial disputes rules and procedures. Submission of such matter to the AAA must be made within fifteen (15) days of the receipt of the notice of default and will stay the involuntary withdrawal until a final decision is rendered in the arbitration.

WHEREFORE, each Participating Municipality has duly approved and caused to be executed this Agreement on the dates set forth below, to be effective for the year commencing on _____.

TOWN OF SOUTH WINDSOR

TOWN OF EAST HARTFORD

By:
Its:

By:
Its:

TOWN OF MANCHESTER

By:
Its:

Exhibit __

1) Annual Budget

By December 1 of each year, the Governing Board will adopt an Annual Budget for the Facility for the ensuing fiscal year (the fiscal year beginning the following July 1). The Annual Budget will reflect Annual Expenses for the facility only. *Each member town will be responsible for the care of their impounded animals, including feeding and medical care.*

2) Annual Expenses

a) The Annual Budget will include the following estimated expenses related to the facility:

- i) Heat, electricity, water, sewer, communications (telephone, internet)
- ii) Building and grounds maintenance and repairs
- iii) Insurance
- iv) Future capital projects or major repairs
- v) Other Facility expenses determined to be appropriate by the Governing Board

b) There will be a non-lapsing capital account established separate from the operating accounts to allow for the accumulation of capital funds budgeted as part of 2.a.iv for future planned capital projects and major repairs.

3) Participating Municipality Payments

a) The Annual Expenses that comprise the Annual Budget will be divided among the Participating Municipalities based on the following formula:

- i) Calculate the total number of impounded animals for each Participating Municipality from the prior fiscal year.
- ii) For each impounded animal, calculate the total number of days each impounded animal resided at the Facility.
- iii) For each Participating Municipality, multiply the number of impounded animals times the number of days each resided in the Facility. This will equal the number of "Impound Days" for each Participating Municipality.
- iv) Calculate the total number of Impound Days for all Participating Municipalities combined.
- v) Divide the total number of Impound Days for each Participating Municipality by the total number of Impound Days from the previous step 3.a.iv for all Participating Municipalities. The results represent each Participating Municipality's percentage of the total number of Impound Days.
- vi) Calculate each Participating Municipality's share of the Annual Expenses and Special Assessments by multiplying their respective percentages from the previous step 3.a.v times the Annual Expenses and Special Assessments combined.

b) Annual Expenses and Special Assessments shall be payable by each Participating Municipality quarterly, beginning on July 1 of each fiscal year.

For the purpose of calculating each Participating Municipality's share of the Annual Expenses and Special Assessments, the amount that each Participating Municipality is obligated to pay may be reduced by actual operating revenues collected by the Facility (such as non-specific fees paid or non-specific donations or grants made directly to the Facility.) In such instances, the final quarterly payment due from a Participating Municipality will be adjusted to provide a credit for actual operating revenues collected. The credit will be based on a Participating Municipality's percentage as set forth in paragraph 3.a.v. Should the credit exceed the amount due from a Participating Municipality in its final quarterly payment, excess amounts will be credited to that Participating Municipality's account and applied to the next quarterly payment due.

4) Administrative Fees

In addition to the Annual Budget, each year the Governing Board will set an annual administrative fee to be paid to the Participating Municipality designated as the administrative manager of the facility. The administrative fee will be shared equally among the other Participating Municipalities. The administrative fee will be in addition to a Participating Municipality's share of the Annual Expenses.

5) Special Assessments

In the event that there is an immediate need for repairs, equipment or payment of other operating expenses not anticipated in the budget and not coverable by the capital account, each Participating Municipality shall be specially assessed for such costs according to the formula set forth in section 3.a hereof. Notwithstanding this provision, the Governing Board's members may unanimously agree to a different method of allocating or collecting such extraordinary costs and special assessments provided that the Participating Municipality that initially paid for such expenses, if any, approves of same.