STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  

RECREATION CONTRACTOR AGREEMENT

This AGREEMENT is made and entered into on this 22nd day of August 2016, by and between the COUNTY OF SPARTANBURG, a political subdivision of the State of South Carolina, having its principal place of business at 366 North Church Street, Spartanburg, SC 29303 ("County"), and Spartanburg Humane Society ("Contractor"), located at 150 Dexter Rd, Spartanburg, SC 29303.

WHEREAS, the Spartanburg County Parks Department (SCPD) wishes to provide certain recreation services to the general public, and

WHEREAS, the SCPD has access to and agrees to make available facilities for the delivery of these services to the citizens of Spartanburg County.

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the Contractor and the County, each for itself and its successors and assigns, intending to be fully and legally bound, agree as follows:

1. CONTRACT DOCUMENTS. The entire contract entered into by the County and the Contractor shall incorporate the Mutual Expectations, attached hereto as Exhibit A and incorporated herein by reference and the Workers Compensation Statement of Independent Contractor attached hereto as Exhibit B and incorporated herein by reference.

   a. In the event that additional services are agreed upon between Contractor and the County, the parties shall execute addendums to this Agreement describing the additional services, including the fees, schedule and mutual expectations.

   b. This contract is non-exclusive. At its sole discretion, the County may enter into other agreements with other contractors.

   c. Equipment, lesson plans and manuals provided by the Contractor are the property of the Contractor and will not be used by the County for its own purposes without the written consent of the Contractor.

   d. The Contractor may not deliver services in County-owned or -managed recreation facilities unless payment for those services are received by the County.

2. TERM/TERMINATION. This Agreement shall remain in effect for one calendar year from the date of execution. Should both parties agree this Agreement may be renewed for up to two (2) additional one-year terms.
a. This Agreement may be terminated by either party on thirty (30) calendar days' prior written notice. In the event of any such termination, the Contractor shall be paid for all properly authorized services that it performed prior to such termination, including any properly authorized services performed during the notice period.

3. PAYMENTS. The County agrees to pay the Contractor based on the specifications in Exhibit A. Said payments will be paid monthly or at the conclusion of the program, whichever period is shorter.

4. INDEPENDENT CONTRACTOR. The Contractor shall perform all services hereunder as an independent contractor and nothing contained herein shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent or master and servant, or employer and employee between the parties hereto or any affiliates or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

a. The Contractor also agrees not to be treated, or seek to be treated, as an employee of the County for any purpose, including for the purposes of fringe benefits provided by the County, or for disability income, social security taxes and benefits, Federal unemployment compensation taxes, State unemployment insurance benefits and Federal income tax withholding at sources.

b. The Contractor hereby represents that the Contractor has and at all times will maintain timely payments of all taxes due to the Internal Revenue Service and all other government agencies, including withholding and all other taxes.

c. The Contractor understands that any and all payments from the County will be reported on a Form 1099 and the Contractor is responsible for any and all federal, state and local taxes due on such amounts. The Contractor agrees to hold harmless and indemnify the County and its subsidiaries and affiliates against any loss or damage (including reasonable attorney fees) that may be sustained by reason of the failure of the Contractor with such laws, ordinances, regulations and codes.

5. COMPLIANCE WITH LAWS. The Contractor agrees to comply with all applicable Federal, state, county and local laws, ordinances, regulations and codes in the performance of its obligations under this Agreement, including but not limited to the procurement of permits, licenses and certificates where required and payment of applicable taxes. The Contractor further agrees to hold harmless and indemnify the County and its subsidiaries and affiliates against any loss or damage (including reasonable attorney's fees) that may be sustained by reason of the failure of the Contractor to comply with such laws, ordinances, regulations and codes.
6. COMPLIANCE WITH COUNTY PROCEDURES. The Contractor agrees to comply with the County’s Drug Abuse Policy, which prohibits the selling, distributing, manufacturing, processing, using or being under the influence of illegal drugs or illicit narcotics (non prescriptive medication) as defined by the state or on County-owned or -managed premises. In the event that the Contractor or any of Contractor’s employees violates the aforementioned policy, said person will be barred from performing any further services for the County and this Agreement may be terminated by the County. In the event this Agreement is terminated pursuant to the provisions of this Article no further liabilities or obligations shall accrue to County, except for any Fees due and owing for Services performed as of the time of such termination.

7. INDEMNIFICATION. The Contractor shall defend, indemnify and hold the County harmless from and against any claim, liability, loss, cost or expense (including reasonable attorneys’ fees) arising out of or resulting from any personal injury or death to persons, or damage to property, in the performance of the services that are delivered under this contract, when the claim, liability, loss, cost or expense is caused by the negligence or willful misconduct of the Contractor or Contractor’s employees.

8. LIMITATION OF LIABILITIES. COUNTY SHALL HAVE NO LIABILITY FOR ANY CLAIM RELATING TO THIS AGREEMENT. IN NO EVENT SHALL THE COUNTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9. INSURANCE. The Contractor shall not be covered by any insurance, including Workers Compensation, of the County. If the Contractor employs three or fewer employees, in accordance with SC State Workers Compensation guidelines, the Contractor will be required to complete and return a Workers Compensation waiver, enclosed herein as Exhibit B, prior to beginning any work under this Agreement. If the Contractor provides the County with a Certificate of Insurance that indicates Workers Compensation coverage, then the execution of the waiver is not required.

10. TAXES. The Contractor understands that any and all payments made to the Contractor by the County will be reported on a Form 1099 and that the Contractor is responsible for any and all federal, state and local taxes due on such amounts. The Contractor agrees to hold harmless and indemnify the County and its subsidiaries and affiliates against any loss or damage (including reasonable attorney fees) that may be sustained by reason of the failure of the Contractor to comply with such laws, ordinances, regulations and codes.

11. REPRESENTATIONS AND WARRANTIES. The Contractor represents and warrants that the services performed pursuant to this Agreement shall be performed in a professional manner by individuals well qualified to perform such work, and agrees to provide the County, on request, with information concerning the individuals’ experience which affirms these qualifications.

12. BEHAVIOR EXPECTATIONS.
a. The Contractor will act as a good caretaker and custodian of all property owned or managed by Spartanburg County by avoiding any activity that may damage the facilities, by cleaning up trash after each use, by enforcing the “no tobacco use” policy, and by turning off lights in the recreation facilities after a program has concluded.

b. For those services which involve direct interaction with children, the Contractor will assist the County in protecting children by conducting and/or authorizing annual criminal background checks on all Contractor employees. These checks shall be conducted prior to the beginning of each contract. The Contractor shall employ a reputable company to conduct such checks. Upon request, the Contractor shall furnish to the SCPD’s Recreation Manager a listing of the persons that have successfully undergone a criminal background check prior to the beginning of those person’s involvement with any youth related activities.

c. Contractors will treat program customers, volunteers, other contractors and County employees with courtesy and respect.

13. RECREATION MANAGER. The Recreation Manager is responsible for monitoring the Contractor’s work, for review and approval of payments and shall act as the agent for the purpose of any notices required or given under this Agreement.

Recreation Manager: Jon Woodsby
Spartanburg County Parks Department
9039 Fairforest Road
Spartanburg, SC 29301
Email: jon.woodsby@spartanburgparks.org
Telephone Number: 864-804-0275

14. NONDISCRIMINATION. The Contractor agrees to comply and to cause its agent(s) and/or subcontractors to comply with the provisions of all applicable federal, state, and local laws, regulations and executive orders relating to equal opportunity and nondiscrimination in employment, and the use of minority business enterprises, to the extent that any such laws, orders and regulations are applicable in the performance of their work hereunder. For the purpose of this Agreement, the provisions of such laws, orders and regulations shall be deemed an integral part of this Agreement to the same extent as if they were written at length herein.

15. NON-SUBORDINATION. Each Party agrees that in performance of its obligations under this Agreement, it will not make or offer to make any payments to, or confer, or offer to confer any benefit upon any employee, agent or fiduciary of any third party, with the intent to influence the conduct of such employee, agent or fiduciary in relation to the business of such third party, in connection with this Agreement.
16. WORK POLICY. The Contractor agrees to observe the working hours, work rules, building security measures and holiday schedule of the County, which will be provided to the Contractor upon request; provided, however, that adherence to such working hours and schedules shall not constitute justification for non-achievement of agreed upon schedules and deadlines.

17. FACSIMILE/SCANNED SIGNATURE. The parties agree that use of a fax or scanned signature and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signature, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

18. GENERAL PROVISIONS.

a. Paragraph Headings. Paragraph headings are for convenience only and shall not be a part of the Terms and Conditions of this Agreement.

b. Waiver. Failure by either party at any time to enforce any obligation by the other party, to claim a breach of any term of this Agreement or to exercise any power agreed to hereunder will not be construed as a waiver of any right, power or obligation under this Agreement, will not affect any subsequent breach, and will not prejudice either party as regards any subsequent action.

c. Severability. If any term or provision of this Agreement should be declared invalid by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall remain unimpaired and in full force and effect.

d. Subcontractors. In the event subcontractors are used, the County reserves the right of approval of all subcontractors, which approval will not be unreasonably withheld by the County. Approval of any subcontractor by the County shall not constitute the supersedence or waiver of any right of the County to reject work which is not in conformance with its standards or this Agreement. The Contractor shall be fully responsible for its subcontractors. Nothing in this Agreement shall be construed to create any contractual relationship between the County and any subcontractor, nor any obligation on the part of the County to pay or to see to the payment of any money due any subcontractor as may otherwise be required by law.

e. Record Retention. The Contractor agrees to maintain complete and accurate accounting records in accordance with sound accounting practices to substantiate the Contractor's charges hereunder. The Contractor shall preserve such records for a period of not less than five (5) years after completion of the pertinent services. The County shall have access to such records for purposes of audit through an accounting firm selected and paid by the County. Any such review of the Contractor's records shall be conducted upon not less than seven (7) calendar days prior written notice at a place where the Contractor's records
are customarily maintained or as otherwise agreed by the parties at reasonable times during normal business hours.

f. Assignment. Neither party may assign any rights or obligations under this Agreement without the prior consent of the other.

g. Modification. No modification, waiver or amendment of any term or conditions of this Agreement shall be effective unless and until it shall be reduced to writing and signed by both of the parties hereto or their legal representatives and specifically reference this agreement. All legally required amendments will automatically become part of this Agreement upon execution by both parties.

h. Survival. The provisions of this Agreement that by their nature and content are intended to survive the performance hereof, shall so survive the completion and termination of this Agreement.

i. Governing Law. This Agreement shall be governed by and construed and enforced as if the Agreement were made for performance entirely within the State of South Carolina and the County of Spartanburg. Both parties consent to jurisdiction and venue in the state and federal courts in Spartanburg County, State of South Carolina.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized officer(s), have executed this Agreement as of the day and year first set forth below.

For Contractor:

WITNESSES:

[Signatures]

For County:

WITNESSES:

[Signatures]
ATTEST:

Debbie C. Ziegler
Clerk to County Council

APPROVED AS TO FORM:

County Attorney's Office

CC:

Recreation Manager, Spartanburg County Parks Department
Exhibit A
Mutual Expectations

1. Program Title: Pet Pals

2. Description of Contractor Service: Program that teaches school aged children how to care for pets.

3. Program Risks to Participants/Limitations: Any risks associated with animal handling.

4. Description of Materials/Equipment Provided by Contractor: Program supplies, supplies used with animals

5. Planned Program Locations, Dates, Days and Times:
   a. Woodruff Leisure Center ACE – 2016-2017 school year – once monthly – times TBD
   b. Duncan Elementary ACE - 2016-2017 school year – once monthly – times TBD
   c. 

6. Number of Participants:
   a. Minimum: 10
   b. Maximum: 45

7. Program Fees Charged to Participants: None

8. Public Served (Target Market) By Project/Program
   a. _____ Families (parents and children together)
   b. Age Group (check all that apply):
      _x_ 17 & under
      ___ 18-24
      ___ 25-50
      ___ 50 & over
   c. Sex (check only one):
      ___ Male Only
      ___ Female Only
      _x_ Both Male and Female

9. Start/End of Agreement (initial year of Agreement)
   a. Start Date: ___August 2016_______
   b. End Date: ___August 2019_______

10. Responsibilities of Contractor:
    a. Submit a completed W-9 Form to the Recreation Manager prior to the start of the first scheduled program date.
    b. Begin and end program activities on time.
    c. Leave recreation facilities as found, in a neat and presentable condition.
d. Return all equipment used by the Contractor and program participants to its assigned storage location.

e. Call the Recreation Manager at least two days before the program begins to verify participant enrollment.

f. Organize, plan and operate the program as described in announcements.

g. Promote the program. Any flyers or other printed materials used must be pre-approved by the Recreation Manager.

h. Verify that all participants have paid for program participation. Advise the Recreation Manager if the program participant roster supplied by the SCPD is not accurate.

i. Do not collect any fees from participants. All participant fees must be remitted to the SCPD.

j. Do not sell merchandise or promotional items unless prior approval is granted by the SCPD.

k. If a program date must be cancelled, Contractors must provide a make-up date or a pre-approved substitute program. Contractors must notify the Recreation Coordinator of any cancellations. If a program is cancelled with less than a 24-hour notice, the Contractor must assist the SCPD with notifying participants.

l. For multi-session programs, if a participant expresses dissatisfaction with a program to SCPD after the first program session, the participant is entitled to a full refund. If dissatisfaction is not expressed to the SCPD before the second program session, no refunds are given.

11. Responsibilities of County:

   a. Registering participants, sending out required forms to participants, collecting fees from participants and providing a program roster to the Contractor.

   b. Provision of recreation facilities where program will be held.

   c. Advertising of program on SCPD website: www.spartanburgparks.org

   d. Publicity for the program through periodic media contacts.

   e. Paying Contractor in a timely manner at the program conclusion.

12. Contractor Contact Information:

   a. Name: Angel Cox

   b. Title: CEO

   c. Address: 150 Dexter Road, Spartanburg, SC 29302

   d. Business Phone: 864-583-4805

   e. Home Phone: N/A

   f. Cellphone: 864-921-8350

   g. Fax:

   h. Email: angelco@spartanburghuman.org

13. Contact Information for the Coordinator(s) of the recreation facilities where the program will be held will be made available to the Contractor to facilitate clear communications, once the contract has been signed.
Hey Pat,

I am requesting signatures on the attached agreement.

Thanks,

Jon Woodsby, CPRE, CPSI, CYSA
Recreation Manager
Spartanburg County Parks Department
9039 Fairforest Road
Spartanburg, SC 29301
Office: 864-804-5815
Mobile: 864-804-0275
http://spartanburgparks.org/

"Your Partner In Community Wellness"

From: Jennifer Borenstein
Sent: Monday, September 26, 2016 11:08 AM
To: Jon Woodsby
Subject: Human Societ Contract

See attached.

"Your Partner In Community Wellness"

Jennifer K. Borenstein
Administrative Assistant
Spartanburg County Parks Department
9039 Fairforest Rd.
Spartanburg, SC 29301
Office Phone: 864-804-5819
Cell Phone: 864-804-4051
Website: http://spartanburgoarks.org/

"Don’t worry about failures, worry about the chances you miss when you don’t even try.” – Jack Canfield