AMENDMENT NO. 1 TO AGREEMENT BETWEEN NEW CASTLE COUNTY AND THE FIRST STATE ANIMAL CENTER AND SPCA

THIS AGREEMENT is made this 28th day of August, 2015, by and between NEW CASTLE COUNTY, a political subdivision of the State of Delaware (“County”) and FIRST STATE ANIMAL CENTER AND SPCA or its successors, a Delaware Corporation (“FSAC”).

In consideration of the mutual promises and covenants contained herein, the County and FSAC (“Parties”) agree to amend their Agreement made on February 1, 2014, as follows:

1. This Agreement shall commence on September 16, 2015 and shall terminate on December 31, 2015. This Agreement may be extended, upon written mutual agreement of the Parties, for three (3) additional terms of one year each.

2. FSAC agrees to enforce the provisions of 9 Del. C. §§ 900-928, inclusive, and New Castle County Code Sections 4.02.001-4.02.006 and Section 22.02.007. The County delegates all lawful authority to FSAC necessary to such enforcement.

3. The hours of operation and the number of employees working to provide this service will fluctuate. However, FSAC’s emergency response responsibilities shall be unaffected.

4. The County shall pay FSAC the sum of $86,250.00 monthly during the initial term of this Agreement. If this Agreement is extended, pursuant to the terms set forth above, the Parties agree that payment will increase at a rate of no greater than five percent (5%) per term.

5. Payment for services rendered by FSAC under this Agreement shall be paid by the County to FSAC on a monthly basis. Payment shall be processed during the first business week of each month. FSAC shall provide the County with an invoice for payment at least two (2) weeks in advance of the first business week of each month of service.

6. FSAC covenants and agrees and is hereby authorized to retain, place for adoption or release for transfer (provided a fee is paid to cover the expense of adoption) or humanely euthanize said dogs redeemed within the time or method prescribed by all applicable State and County laws, as may be amended from time to time. No dog shall be given or sold for the purpose of vivisection or any laboratory purpose.

7. FSAC shall provide, in compliance with all applicable laws, food and kennel services required in connection to its services under this Agreement. FSAC shall retain, as part of the consideration due under this Agreement, all redemption and other fees or charges received by it with respect to any dog impounded by it pursuant to this Agreement. FSAC shall notify the County if and when such fees increase.

8. FSAC agrees that representatives of the County shall have access to inspect all facilities operated or controlled by FSAC with no advance notice required.
9. The County hereby designates as dog wardens those employees of FSAC who shall be appointed from time to time as dog-control officers by FSAC with all the power to enforce the provisions of 9 Del. C. §§ 900-928, inclusive, and New Castle County Code Sections 4.02.001-4.02.006 and Section 22.02.007. Such officers will be sworn in by the County as Animal Control Constables.

10. FSAC agrees to submit a monthly report to the County of all of its activities performed under this Agreement.

11. FSAC shall perform all of its responsibilities under this Agreement in accordance with all applicable federal, state and local statutes, ordinance, rules, orders and regulations.

12. FSAC shall indemnify and hold the County, its employees, officials, licensees, and agents ("Related Parties") harmless from any and all claims, losses, actions, liabilities, damages, judgments and expenses asserted by a person or persons, including but not limited to, agents, employees, and/or volunteers of FSAC arising out of FSAC's performance under this Agreement and by reason of death or injury to persons, or loss or damage to property resulting from operations or use of services, products, and/or equipment purchased hereunder, or sustained in or upon the premises of New Castle County. This section is not intended to waive any of the County's or Related Parties' defenses, rights or protections from liability pursuant to Title 10 of the Delaware Code, as may be amended from time to time.

13. FSAC shall acquire and maintain any insurance deemed by the County to be necessary including liability, casualty, and comprehensive insurance in amounts sufficient to protect both Parties from loss - Workers Compensation, General Liability $1 million, Auto Liability $1 million, and Professional Liability $1 million.

14. This Agreement may be terminated for cause by either Party with at least sixty (60) business days’ written notice. The terminating Party must provide notice to the other Party at the address listed in the notice section of this Agreement and in accordance with the notice section of this Agreement. Written notice must be sent by the terminating Party and received by the other Party at least sixty (60) business days in advance of the proposed termination date.

15. Any notice or report required to be given under this Agreement shall be sufficient if in writing and sent by certified mail to FSAC at 32 Shelter Circle, Camden, Delaware, 19934, or to any other such address as FSAC may provide by letter. Any notice or report required to be given hereunder to the County shall be sufficient if in writing and sent by certified mail to New Castle County, Chief of Administrative Services, 87 Reads Way, New Castle, Delaware 19720.

16. This Agreement shall be governed by and construed in accordance with Delaware law. Any actions hereunder shall be brought in a court of competent jurisdiction in New Castle County, Delaware.
17. If one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect or for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and the Agreement shall be construed as if the invalid, illegal or unenforceable provision had not been included.

18. This document comprises the entire agreement between the Parties hereto and supersedes any prior agreements, whether verbal or in writing.

19. This Agreement may not be modified or amended without the express written consent of both Parties to this Agreement. No amendments or modifications to this Agreement shall be binding unless in writing and signed by both Parties.

20. This Agreement is not intended to create any third party rights, and its provisions are only applicable to the Parties who have executed this Agreement.

IN WITNESS WHEREOF, NEW CASTLE COUNTY has caused this Agreement to be executed by the County Executive, and the FIRST STATE ANIMAL CENTER AND SPCA has caused this Agreement to be executed by its President, duly attested by its Secretary and its corporate seal to hereto affixed.

NEW CASTLE COUNTY

By: ______________________
Attest: ____________________

FIRST STATE ANIMAL CENTER AND SPCA

By: ______________________
Attest: ____________________