AGREEMENT

This agreement (the “Agreement”) is made and entered into effective as of this 21st day of January 2016 by and between the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section (hereinafter referred to as the “Department of Agriculture”), and Columbus County Animal Control (hereinafter referred to as the “Petitioner” or “Columbus County”).

RECITALS

WHEREAS, on June 18, 2015, the Department of Agriculture issued a Notice of Violations and an Assessment of Civil Penalty to Columbus County, a true and correct copy of which is annexed to this Agreement as Exhibit A; and

WHEREAS, in its Notice of Violations, the Department of Agriculture found that:

1. on May 19, 2015, two female pit bull dogs were impounded at the animal shelter operated by Columbus County;
2. the shelter’s impound records indicated that these two dogs had been surrendered by their owners;
3. the dogs’ owner did not provide any proof of ownership to the shelter at the time of the dogs’ impoundment;
4. the shelter’s impound records indicate that the dogs were to be held by the shelter until 2:00 p.m. on May 22, 2015 in order to comply with the 72-hour minimum holding period;
5. the shelter’s impound records indicated that one of these two pit bull dogs was euthanized on May 21, 2015;
6. the paperwork for the euthanized pit bull dog did not document that the euthanized pit bull dog had a serious illness or injury that would have justified the dog’s euthanization prior to the expiration of the 72-hour minimum period;
7. the shelter’s impound records indicated that the other pit bull dog was not euthanized and was released to its owner on May 21, 2015; and

WHEREAS, based on its findings, the Department of Agriculture alleged that Columbus County, either by act or omission, violated N.C. Gen. Stat. § 19A-32.1(a), (b)(l) and (b)(i); and

WHEREAS, based on its findings contained in the June 18, 2015 Notice of Violations, the Department of Agriculture assessed a civil penalty against Columbus County in the amount of $5,000.00; and
WHEREAS, Columbus County disputes the Department of Agriculture’s findings and allegations that Columbus County violated any statute or that it engaged in any improper conduct whatsoever; and

WHEREAS, pursuant to a Consent Agreement entered into on December 13, 2013, between Columbus County and the Department of Agriculture, the parties agreed that Columbus County Animal Control would “prepare and submit a written Standard Operating Procedure (‘SOP’) covering the intake and disposition of animals. The SOP shall be consistent with and reflect the requirements of the North Carolina Animal Welfare Act, N.C. Gen. Stat. §§ 19A-1 et. seq. . . .”; and

WHEREAS, in compliance with this Consent Agreement, Columbus County Animal Control prepared a written Standard Operating Procedure, doing so with the assistance and input of an official from the Department of Agriculture; and

WHEREAS, those Standard Operating Procedure provided, in pertinent part, as follows:

4. Aggressive Animals: When an animal is judged to be extremely aggressive and presents a significant danger to Animal Control Staff when feeding or cleaning, the Animal Control Shelter Manager may authorize euthanasia at an earlier time than would otherwise be dictated; and

WHEREAS, on January 13, 2014, the Columbus County Attorney submitted the Standard Operating Procedure to the Department of Agriculture for review and approval; and

WHEREAS, the Department of Agriculture did not express any objections to Columbus County regarding the Standard Operating Procedure. Consequently, Columbus County reasonably believed that the lack of comment or objection by the Department of Agriculture regarding the Standard Operating Procedure operated as an approval of and endorsement of these procedures. Consequently, Columbus County Animal Control operated pursuant to this Standard Operating Procedure under the reasonable belief that it was approved by the Department of Agriculture, and was otherwise in full compliance with State law, regulation and policy; and

WHEREAS, Columbus County contends that the following events took place with respect to the two female pit bull dogs in question:

1. On May 19, 2015, the dogs’ owner called Columbus County Animal Control and requested that a Columbus County Animal Control Officer come and pick up the dogs, stating that the dogs were aggressive and vicious and that her family no longer wanted them.
2. A Columbus County Animal Control Officer immediately responded to the call and picked up the dogs from their owners’ residence, doing so in the presence of and with the assistance of the owner. The owner personally placed the dogs in the Animal Control Officer’s truck out of concern that the dogs might attack the officer. The Animal Control Officer personally observed the dogs in question to be exceedingly vicious and aggressive.

3. The dogs continued to exhibit vicious and aggressive behavior at the Columbus County Animal Shelter during the following two days. Prisoners working at the facility experienced great difficulty in feeding the animals due to their aggressive temperament and were nearly bitten on several occasions.

4. After two days of continuous and unprovoked vicious behavior, the Columbus County Animal Control Director determined that both dogs exhibited an extremely aggressive temperament such that they presented a serious threat to the safety of the staff of the Columbus County Animal Shelter and that they were otherwise unadaptable.

5. Consequently, the Columbus County Animal Control Director made the considered decision to euthanize the dogs based upon their extremely aggressive temperament. This decision was made in accordance with Paragraph 4 of the Standard Operating Procedures for Columbus County Animal Control, which as noted above, provides that “When an animal is judged to be extremely aggressive and presents a significant danger to Animal Control Staff when feeding or cleaning, the Animal Control Shelter Manager may authorize euthanasia at an earlier time than would otherwise be dictated.” One of the dogs was humanely euthanized using authorized procedures on the morning of May 21, 2015. The dogs’ owner returned to the Columbus County Animal Control Shelter and retrieved the other dog before it was euthanized; and

WHEREAS, Columbus County denies any wrongdoing or improper conduct and submits that it and its personnel acted at all times in good faith and in the reasonable belief that they were following procedures approved by the Department of Agriculture and otherwise in compliance with State law and regulations; and

WHEREAS, on August 10, 2015, Columbus County filed a Petition for a Contested Case Hearing against the Department of Agriculture in the North Carolina Office of Administrative Hearings (hereinafter referred to as the “OAH”) in that contested case entitled Columbus County Animal Control v. The North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, No. 15 DAG 05828 (hereinafter referred to as the “OAH Case”); and
WHEREAS, in summary, Columbus County alleged in its OAH Petition for a Contested Case Hearing, *inter alia*, that the Department of Agriculture had acted improperly and/or without lawful authorization in issuing to Columbus County the June 18, 2015 Notice of Violations and in assessing a civil penalty against Columbus County in the amount of $5,000.00; and

WHEREAS, in its Prehearing Statement filed in the OAH Case, the Department of Agriculture denied the allegations made by Columbus County in its Petition for a Contested Case Hearing in the OAH Case; and

WHEREAS, subsequent to Columbus County’s filing of its Petition for a Contested Case Hearing in the OAH Case, the parties entered into settlement negotiations and discussions and agreed in principal to settle their disputes on the following terms: (i) officials of the Department of Agriculture would meet with officials and representatives of Columbus County and all such officials and representatives would come to an agreement on what they collectively concluded are appropriate written policies and standard operating procedures for the Columbus County Animal Shelter; (ii) once officials and representatives of the Department of Agriculture and Columbus County reached an agreement on what they collectively concluded are appropriate written policies and standard operating procedures for the Columbus County Animal Shelter, Columbus County would memorialize those policies and procedures and include them in Columbus County’s policy manual; (iii) once the matters summarized in sub-paragraphs (i) and (ii) were accomplished, the Department of Agriculture would formally waive the $5,000.00 civil penalty it assessed against Columbus County on June 18, 2015; and (iv) once the matters summarized in sub-paragraphs (i), (ii) and (iii) were accomplished, Columbus County would file a Notice of Dismissal With Prejudice of its Petition for a Contested Case Hearing in the OAH Case; and

WHEREAS, all of the actions referred to in sub-paragraphs (i) and (ii) above have now been accomplished; and

WHEREAS, the Department of Agriculture and Columbus County continue to desire to fully and finally compromise and settle the OAH Case and all other disputes and controversies between them involving or arising out of the matters embraced by Columbus County’s Petition for a Contested Case Hearing in the OAH Case; and

WHEREAS, the Department of Agriculture and Columbus County desire to enter into such a compromise and settlement solely in order to avoid the burden and expense of further litigation.

NOW THEREFORE, for and in consideration of, among other things, the promises contained herein, the representations, covenants and warranties contained herein, the obligations
created hereby and the release(s) contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Department of Agriculture and Columbus County agree as follows:

1. The Recitals set forth above in this Agreement are hereby incorporated into this Agreement by this reference as if fully set forth herein.

2. By its signature below, the Department of Agriculture hereby formally waives the $5,000.00 civil penalty it assessed against Columbus County on June 18, 2015.

3. Within five (5) business days following the full and complete execution of this Agreement, Columbus County shall file a Dismissal with Prejudice of the OAH Case and shall serve a file-stamped copy of said Dismissal on counsel for the Department of Agriculture in the OAH Case.

4. The persons signing this Agreement below represent and warrant that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties.

5. The parties agree to bear their own attorneys’ fees and costs associated with this Agreement and with the matters referred to in this Agreement.

6. The parties acknowledge that this Agreement contains the entire agreement between them regarding the matters set forth and described in it, and that it supersedes all previous negotiations, discussions and understandings between them regarding such matters.

7. The terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.

8. The parties acknowledge and agree that any and all disputes arising out of or under this Agreement, whether sounding in contract, tort or otherwise and including, among all others, the validity, construction, interpretation and enforcement of this Agreement, shall be governed by North Carolina law. Despite the foregoing, the parties further acknowledge and agree that this Agreement shall not be interpreted in favor of or against any party based upon which party drafted or participated in drafting this Agreement.

9. The parties agree and acknowledge that neither side admits to any wrongdoing or improper conduct, and that this Agreement and the parties’ entrance therein shall not constitute any indicia, evidence or determination that any party engaged in any wrongdoing or improper conduct. Moreover, the parties agree and acknowledge that the June 18, 2015 Notice of Violations, Assessment of Civil Penalty and the purported findings therein shall not have any effect -- preclusive, precedential, collateral estoppel, evidentiary, or otherwise -- in any other forum, proceeding or dispute.
10. If any of the provisions of this Agreement are later determined to be invalid or unenforceable by a court of competent jurisdiction, the provisions found to be invalid or unenforceable shall be treated as being severable from the other provisions of this Agreement and this Agreement shall be construed and enforced as if any such invalid or unenforceable provision(s) had not been included in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and signed as of the day and year indicated by their signatures below:

THE NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION, ANIMAL WELFARE SECTION

By: ____________________________
Patricia Norris
Director, Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services

Date: 1/21/2016

COLUMBUS COUNTY ANIMAL CONTROL

By: ____________________________
WILLIAM E. CLARK
Columbus County Manager

Date: 1/15/16
Exhibit A

November 18, 2015 Notice of Violations and Assessment of Civil Penalty
Columbus County Animal Control  
Attn: Rossie Hayes  
Shelter Manager  
288 Legion Drive  
Whiteville, NC 28472

NOTICE OF CIVIL PENALTY

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF NORTH CAROLINA GENERAL STATUTES §§ 19A-32.1 (a) and (b) (1)

Dear Mr. Hayes:

Pursuant to N.C. Gen. Stat. § 19A-40 I am issuing this notice to you that Columbus County Animal Control is assessed a civil penalty of $5,000.00, as provided in the enclosed Notice of Violations and Order.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or

2. File a written petition for a contested case hearing in the NCOAH to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to me. I may be contacted by telephone at (919) 715-7111. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below;
PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services  
Dr. Patricia Norris  
Director, Animal Welfare Section  
1030 Mail Service Center  
Raleigh, NC  27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars ($20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk’s Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney’s trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC  27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlase  
North Carolina Department of Agriculture and Consumer Services  
Registered Agent and General Counsel  
1001 Mail Service Center  
Raleigh, NC  27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.
Your attention to this matter is appreciated.

Sincerely,

Patricia Norris, DVM
Director, Animal Welfare Section

Attachment: Assessment Document

cc: R. Douglas Meckes, DVM, North Carolina State Veterinarian
Mr. Barry Bloch, Assistant Attorney General, N.C. Department of Justice
Ms. Tina Hlabse, General Counsel, NCDA&CS
Mr. Joe Reardon, Assistant Commissioner, NCDA&CS
STATE OF NORTH CAROLINA COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, VETERINARY DIVISION

IN THE MATTER OF COLUMBUS COUNTY ANIMAL CONTROL

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY
) For Violations Of:
) N. C. Gen. Stat. §§19A-32.1 (a) and (b) (1)

Acting pursuant to N.C. Gen. Stat. §19A-40, Dr. Patricia Norris, Director of the Animal Welfare Section ("AWS"), Veterinary Division, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

I. FINDINGS OF FACT

1. At all times pertinent to this matter Columbus County Animal Control ("CCAC" or the "shelter") is an animal shelter registered pursuant to N.C. Gen. Stat. §19A-26.

2. On May 19, 2015 two female pit bull dogs were impounded at the shelter.

3. The impound sheets indicate that the dogs had been surrendered by the owner of the dogs. No proof of ownership was provided at the time of impoundment.

4. The impound sheets indicate that the dogs were to be held until 2 PM on May 22, 2015 to fulfill the 72 hours minimum holding period.

5. The impound sheet for the euthanized dog documents the euthanasia as occurring on May 21, 2015.

6. The paperwork for the euthanized dog does not document a serious illness or injury to justify the euthanasia prior to the 72 hour minimal holding period.

7. The impound sheet for the released dog documents the owner reclaim as occurring on May 21, 2015.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that CCAC, either by act or omission, violated the following provisions of the N. C. General Statute 19A-32.1 (a), (b) (1) and (i). (See Appendix for text of cited General Statutes)

II. CORRECTIVE ACTIONS REQUIRED

CCAC shall develop written policies and procedures that detail the decision parameters for the euthanasia of animals as well as the required documentation. These policies and procedures must be in compliance with the N. C. Animal Welfare Act and the N. C. Administrative Code. These policies and procedures are to be provided to the AWS for review and approval within 7 days of receipt of this letter.

The Director may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s.6: 1998-215,s.3.)

The Director notes that Columbus County Animal Control Shelter was assessed a civil penalty for $6,500.00 on November 26, 2013. That civil penalty was assessed for violation of N.C. General Statute §19A-32.1.

IV. DECISION

As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, CCAC is assessed a civil penalty of: $5,000.00 for violating N.C. Gen. Stat. §§19A-32.1 (a) and (b) (l).

$5,000.00 TOTAL AMOUNT ASSESSED

[Signature]

Date 11/18/2015

Dr. Patricia Norris
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumer Services
Appendix

N. C. General Statutes §§19A-32.1 (a) and (b) (1)

§ 19A-32.1. Minimum holding period for animals in animal shelters; public viewing of animals in animal shelters; disposition of animals.
(a) Except as otherwise provided in this section, all animals received by an animal shelter or by an agent of an animal shelter shall be held for a minimum holding period of 72 hours, or for any longer minimum period established by a board of county commissioners, prior to being euthanized or otherwise disposed of.
(b) Before an animal may be euthanized or otherwise disposed of, it shall be made available for adoption under procedures that enable members of the public to inspect the animal, except in the following cases:
(1) The animal has been found by the operator of the shelter to be unadoptable due to injury or defects of health or temperament.
(2) The animal is seriously ill or injured, in which case the animal may be euthanized before the expiration of the minimum holding period if the manager of the animal shelter determines, in writing, that it is appropriate to do so. The writing shall include the reason for the determination.