

**FIRST AMENDED INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF WILLCOX AND COCHISE COUNTY
FOR THE OPERATION OF AN ANIMAL SHELTER**

RECITALS

WHEREAS, the City of Willcox (“CITY”) and the County of Cochise (“COUNTY”) have been cooperating in the financing, construction and operation of an Animal Shelter (“Shelter”) owned by the COUNTY, pursuant to the terms of an Intergovernmental Agreement entered in 2015; and

WHEREAS, CITY staff provides for the operation and maintenance of the Shelter and enforces the animal control laws in the CITY; and

WHEREAS, it is in the best interests of both parties to continue to operate the Shelter and to conduct these activities jointly to maximize the public benefits that can result from the cooperative use of the resources that are available to each.

WHEREAS, the parties hereby agree to continue cooperating in the financing, operation and maintenance of the Shelter, but with some new or revised terms, as set forth in this Agreement, as authorized by A.R.S. §§ 11-1013; 9-240(B)(16) and A.R.S. § 11-952; and

NOW THEREFORE, it is mutually agreed that the CITY and the COUNTY shall continue to operate and maintain the Shelter upon the following terms and conditions:

1. The CITY agrees to continue to assume responsibility for operating the Shelter and providing all the staff required to operate and maintain the Willcox Animal Shelter in accordance with COUNTY Animal Control Ordinance 039-10. This responsibility includes, but is not limited to, providing food, water, sanitation services, daily outdoor exercise, and other requirements for the animals sheltered there; for providing all necessary utility services; and for providing all the administrative services required for this Shelter. The CITY also agrees to use proper pest control to prevent the spread of pests to the animals in the Shelter.

- a. **Staffing:** The CITY agrees that the Shelter shall be staffed by one full-time and two part-time CITY staff members. This will allow the shelter to be open eight (8) hours per day Tuesday through Saturday by the full-time employee and five (5) hours per day Sunday and Monday, excluding holidays by either the full-time employee or a part-time employee. The other part-time staff member will work 10 hours per week and will assist in the caring of the animals. A staff member shall be paid to maintain appropriate care for animals on holidays.
 - b. **Refusal for Lack of Capacity:** The CITY may refuse any COUNTY animals when the CITY determines that it does not have adequate capacity at the Shelter to house the animals humanely. The CITY shall notify COUNTY ACO's in advance when the Shelter is at or near capacity.
2. The CITY agrees to accept the dogs and cats that are delivered to the Shelter by COUNTY staff and residents, in the same manner as such animals from the CITY are accepted, subject to the availability of adequate space for COUNTY animals. The CITY agrees to make its best effort to track complete address information of owner, if obtainable. The COUNTY agrees that if its representatives are unwilling to allow the CITY time to find placement for COUNTY animals, that the COUNTY'S agents will dispose of those animals at the COUNTY'S expense.
3. COUNTY staff using the Shelter shall follow all policies, procedures and guidelines established by the CITY for the operation of the Shelter, including specifically completing paperwork and following established procedures for incoming animals.
4. The CITY shall be entitled to compensation from the COUNTY for the animal care services that it provides pursuant to this Agreement. For fiscal year 2020, the amount of compensation paid by the COUNTY shall be \$77,570 paid in four quarterly installments. Any future increase shall be considered based on the CITY's updated annual budget and current fiscal year actuals. These costs are based on the County's and City's proportionate share of animals and will be discussed at the annual meeting held no later than April.
5. The CITY shall submit to the COUNTY a quarterly invoice with an activity

report for the prior quarter to include:

- a. The number and type of animals impounded by COUNTY.
 - b. The number and type of animals impounded by COUNTY Residents, with location/address information.
 - c. The amount collected by the CITY in applicable fees for COUNTY and COUNTY Resident animals.
 - d. Verification of operating hours and responsible staff, with any changes noted.
 - e. Operational summary of budget versus actual expenses as given in Exhibit A.
 - f. Facility maintenance concerns and requests for COUNTY support, if necessary.
6. The CITY shall maintain the facility in good, clean and safe condition and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. The CITY shall be responsible for providing routine and preventative maintenance to the facility. The term "routine maintenance" includes each separate maintenance activity that does not exceed the total cost of \$1,000 dollars for labor and materials. The CITY is responsible for all costs necessary to repair the facility because of any vandalism or destruction caused by the CITY or any of its employees or agents and shall report to the COUNTY any damage to the Facility as soon as it is identified. The CITY is responsible for completing all such repairs and maintenance within 60 days of discovery. The COUNTY will assume responsibility for any repairs and improvements that may be required that are beyond the scope of routine maintenance to include acts of God.
7. This Agreement shall be in effect upon its approval by the respective governing bodies. Thereafter, this Agreement shall be automatically renewed for three (3) successive fiscal years, unless either party provides written notice of its intent to terminate the Agreement, which must be provided not less than ninety days prior to the start of the next fiscal year.
8. This Agreement may be cancelled for conflict of interest as provided in A.R.S. § 38-511, pursuant to the terms of that statute.
9. Each party may at any time request an amendment to this Agreement. This Agreement is subject to amendment upon the mutual consent of the

respective governing bodies, by the approval of a formal written amendment to this Agreement. On at least an annual basis, the parties shall meet, through their respective representatives, to discuss the operations of this Shelter and the needs of each party for any changes to this Agreement or the applicable procedures, as may be necessary to best accomplish the purposes of this Agreement.

10. The COUNTY shall defend, hold harmless, and indemnify the CITY, its officers, agents and employees, from all claims, demands, suits, damages or loss ("claims") that result from the negligence or intentional acts of the COUNTY, its agents, officers and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional acts. The CITY shall defend, hold harmless and indemnify the COUNTY, its officers, agents and employees, from all claims, demands, suits, damages or loss ("claims") that result from the negligence or intentional acts of the CITY, its agents, officers, and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional acts. The extent of the foregoing liabilities shall be limited to and determined by the respective fault of the parties, their agents, officers and employees, in comparison with others (including, but not limited to, the other party) who may have contributed to or in part caused any such claim to arise. This duty to defend, indemnify and hold harmless is not negated or otherwise limited by the characterization of the underlying duty as a "non-delegable duty" for which either party may be vicariously liable, as a matter of law. If a claim or claims by third parties become subject to this indemnity provision, the parties shall expeditiously meet to discuss a common and mutual defense, including possible proportionate liability and payment of possible litigation expenses and damages. The obligations under this Section 10 shall survive termination of this Agreement.

11. Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, genetic information, disability, familial status, political affiliation or national origin in the course of carrying out the duties pursuant to this Agreement. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this Agreement by reference as if set forth in full herein, and of the Americans with Disabilities

Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, as well as the Genetic Information Nondiscrimination Act of 2008.

12. The parties are required to comply with A.R.S. § 41-4401, and hereby warrants that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. § 41-4401, and with the e-verification requirements of A.R.S. § 23-214(A) (together the “state and federal immigration laws”). The parties further agree to ensure that any subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws.
13. The parties shall procure and maintain worker’s compensation coverage as required by law, and each party shall comply with the notice provisions of A.R.S. § 23-1022(E). For purposes of A.R.S. § 23-1022(D), an employee of either party who works under the jurisdiction or control of or within the jurisdictional boundaries of the other party pursuant to this Agreement is deemed to be an employee of both parties for the purposes of A.R.S. § 23-1022. The primary employer of each employee shall have the sole responsibility for the payment of workers’ compensation benefits or other fringe benefits of said employees.

IN WITNESS WHEREOF, the parties have authorized the designated officials indicated below to execute this Agreement indicating their respective approval.

COCHISE COUNTY SHERIFF

Mark Dannels
Sheriff

COCHISE COUNTY

Peggy Judd
Chair, Board of Supervisors

ATTEST

Arlethe G. Rios
Clerk, Board of Supervisors

CITY OF WILLCOX



Michael J. Laws
Mayor, City of Willcox

ATTEST



Crystal Hadfield
Clerk, City of Willcox

Pursuant to A.R.S. § 11-952(D), the undersigned attorneys have reviewed the foregoing Agreement, and confirm the Agreement is in proper form, and is within the powers and authority granted to each party under Arizona law.

APPROVED AS TO FORM

Britt Hanson
Chief Civil Deputy, County Attorney
Cochise County

APPROVED AS TO FORM

William Simms
City Attorney, City of Willcox