

GENERAL SERVICES AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO by and between the Cochise County (the "County"), and THE HUMANE SOCIETY OF SOUTHERN ARIZONA, INC., an Arizona non-profit corporation (the "Contractor"), for the purpose of providing animal sheltering services to the County. The County and the Contractor are sometimes collectively referred to as the "Parties," each of which is sometimes individually referred to as a "Party."

ARTICLE 1. SCOPE OF WORK

1.01. The services to be performed by the Contractor under this Agreement shall be as described in this Agreement and as set forth in the Fee Schedule, which is attached as **Exhibit A** to this Agreement.

1.02. The services to be performed by the Contractor under this Agreement shall not in aggregate exceed \$32,000 per fiscal year.

ARTICLE 2. TERM

2.01. This Agreement shall be effective for an initial two-year term beginning on August 10, 2021 and ending on August 10, 2023.

2.02. The County, at its sole discretion, may renew this Agreement for up to two consecutive one-year periods on the same terms as set forth in this Agreement, by executing a written amendment setting forth the renewal term and signed by the County and the Contractor.

2.03. Before each of the two one-year extension periods, the Contractor may request revisions to the fee schedule, Exhibit A, for the extension period to address increased costs, services, market conditions, demand, and the like. If the County refuses to agree to modify the fee schedule, the Contractor's sole remedy is to terminate this Agreement at the end of the then-current one-year term (see section 6.02 below).

2.04. The term of this Agreement, including all renewals, shall not exceed four years.

ARTICLE 3. RELATIONSHIPS

3.01. In the performance of the services described in this Agreement, the Contractor shall act solely as an independent contractor, and nothing expressed or implied in this Agreement shall be construed to create the relationship of employer and employee, partnership, principal, and agent, or to create a joint venture between the County and the Contractor.

3.02. In relation to services performed by the Contractor for or in connection with the Town, the Contractor states and declares the following:

3.02.01. The Contractor acknowledges that the Contractor operates the Contractor's own independent business and is providing services for or in connection with the County as an independent contractor.

3.02.02. The Contractor acknowledges that the Contractor is not an employee of the County and the services rendered for or in connection with the County do not establish any right to unemployment benefits or any other right arising from an employment relationship.

3.02.03. The Contractor is responsible for all tax liability associated with payments received from or through the County and the County will not withhold any taxes from payments to the Contractor.

3.02.04. The Contractor is responsible for obtaining and maintaining any required registration, licenses, or other authorization necessary for the services rendered by the Contractor.

3.02.05. The Contractor acknowledges at least six of the following:

- (1) That the Contractor is not insured under the County's health insurance coverage or workers' compensation insurance coverage.
- (2) That the County does not restrict the Contractor's ability to perform services for or through other parties and the Contractor is authorized to accept work from and perform work for other businesses and individuals besides the County.
- (3) That the Contractor has the right to accept or decline requests for services by or through the County.
- (4) That the County expects that the Contractor provides services for other parties.

- (5) That the Contractor is not economically dependent on the services performed for or in connection with the County.
- (6) That the County does not dictate the performance, methods or process the Contractor uses to perform services.
- (7) That the County has the right to impose quality standards or a deadline for completion of services performed, or both, but the Contractor is authorized to determine the days worked and the time periods of work.
- (8) That the Contractor will be paid by or through the County based on the work the Contractor is contracted to perform and that the County is not providing the Contractor with a regular salary or any minimum, regular payment.
- (9) That the Contractor is responsible for providing and maintaining all tools and equipment required to perform the services performed.
- (10) That the Contractor is responsible for all expenses incurred by the Contractor in performing the services.

3.01.01. The Contractor acknowledges that the terms set forth in this declaration apply to the Contractor, the Contractor's employees, and the Contractor's independent contractors.

3.02. The Contractor shall report to and coordinate duties with Associate County Administrator, Sharon Gilman (the "County Representative").

3.03. Under the direction of and in coordination with the County Representative, the Contractor shall work cooperatively with County staff, officials, boards, commissions, and committees, and with any other agency, organization or individual the County Representative deems necessary to complete the services described in Article 1 (Scope of Work) of this Agreement.

3.04. All notice requests and authorizations provided for in this Agreement shall be in writing and shall be delivered or mailed, addressed as follows:

County: COCHISE COUNTY
Attention: Sharon Gilman, Associate County Administrator
Address: 1415 Melody Lane
Bisbee, AZ 85603

Contractor: THE HUMANE SOCIETY OF SOUTHERN ARIZONA, INC.
Attention: Kelley Smith, Director of Finance
Address: 635 W Roger Rd.
Tucson, Arizona 85705

ARTICLE 4. LIMITATION OF ASSIGNMENT

4.01. For purposes of the work and services performed under this Agreement and the obligations and requirements imposed on the Contractor pursuant to this Agreement, the term "Contractor" shall include the Contractor, Contractor's staff, Contractor's volunteers, all sub-contractors identified in the Contractor's Proposal, and all other persons working at Contractor's request or direction as permitted by this Agreement.

4.02. The work and services provided for in this Agreement shall be performed by the Contractor, except as otherwise provided in this Article or approved in writing by the County Representative.

4.03. Secretarial, clerical, and similar incidental services needed to assist the Contractor in performance of this Agreement are not subject to the limitations of section 4.01 above.

4.04. Neither this Agreement nor any interest or rights under this Agreement may be assigned or transferred by the Contractor without the express written consent of the County Representative.

ARTICLE 5. INVOICES AND PAYMENT

5.01. Except as otherwise agreed to in a written amendment to this Agreement signed by the Parties, the Contractor shall charge the rates set forth on the fee schedule, Exhibit A, for all services and work performed by the Contractor under this Agreement.

5.02. The Contractor shall submit to the County Representative for processing and payment a monthly invoice for services performed during the previous month under this Agreement.

- 5.02.01.** Each invoice shall be accompanied by a monthly report of activity, as described in the Fee Schedule (Exhibit A), in a format mutually agreed upon by the Parties.
- 5.02.02.** The Contractor shall be liable for all taxes applicable to the proceeds received by the Contractor under this Agreement. The County shall not withhold or pay federal, social security, or state income taxes or workers' compensation out of the proceeds payable by the County under this Agreement, unless duly ordered to do so by a court or other government authority with jurisdiction.
- 5.02.03.** Except as otherwise set forth in this Article, the County shall pay the Contractor within 30 days after the County Representative approves the Contractor's invoice or any portion of it.
- 5.02.04.** The County may withhold final payment for services until the County is reasonably satisfied that the Contractor has complied with all the obligations specified in this Agreement related to the services.

ARTICLE 6. TERMINATION AND BREACH

- 6.01.** The Contractor may terminate this Agreement upon not less than 90 days' written notice to the County Representative if the County fails to perform its obligations under this Agreement through no fault of the Contractor.
- 6.02.** The Contractor may at its option terminate this Agreement at the end of the initial two-year term, or at the end of the first one-year extension, if the County does not agree to modify the fee schedule, Exhibit A, for the renewal period (see section 2.03 above).
- 6.03.** The County may terminate this Agreement with or without cause upon 90 days' written notice to the Contractor.
- 6.04.** This Agreement may be terminated if for any reason the County Board of Supervisors does not appropriate sufficient funds for the purpose of maintaining this Agreement.
- 6.05.** Upon termination, the County shall have no further obligation to Contractor, other than for payment of acceptable services rendered prior to termination, unless otherwise provided by this Agreement.

6.06. Either Party may pursue any remedies available to it for the breach of this Agreement, and no right or remedy is intended to be exclusive of any other right or remedy existing at law or at equity or by virtue of this Agreement.

ARTICLE 7. INDEMNIFICATION

7.01. The Contractor agrees to defend, save, hold harmless, and indemnify the County, its officials, employees, agents, successors, and assigns from and against any and all manner of claims, suits, lawsuits, action or actions, causes or causes of action, liabilities, damages, and other claims and demands of whatsoever nature or kind, in law or in equity, in tort or in contract, or otherwise caused by or resulting from the Contractor's errors, omissions, or negligent acts in the performance of services pursuant to this Agreement.

7.02. The County agrees to defend, save, hold harmless, and indemnify the Contractor, its officials, employees, agents, successors, and assigns from and against any and all manner of claims, suits, lawsuits, action or actions, causes or causes of action, liabilities, damages, and other claims and demands of whatsoever nature or kind, in law or in equity, in tort or in contract, or otherwise caused by or resulting from the County's errors, omissions, or negligent acts in the performance of services pursuant to this Agreement.

7.03. The indemnification provisions set forth in this Article shall survive termination of this Agreement.

ARTICLE 8. INSURANCE

8.01. Except as otherwise provided in this Article, the Contractor shall maintain insurance with carriers acceptable to the County throughout the term of this Agreement with the following required minimum coverages and limits:

- Workers' Compensation Statutory Employer's Liability U.S. \$100,000
- Commercial General Liability U.S. \$1,000,000 per occurrence
- U.S. \$2,000,000 aggregate
- Business Auto Liability U.S. \$1,000,000 combined single limit

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.01. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Arizona.

9.02. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

9.03. If any provision of this Agreement is declared invalid or unenforceable, the remainder shall continue in full force and effect.

9.04. This Agreement may not be changed or modified except by written agreement signed by all Parties.

9.05. All exhibits reference d in and attached to this Agreement are incorporated in and fully made a part of this Agreement by reference.

9.06. The Contractor shall comply with all federal and state equal opportunity laws, orders and regulations and shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, disability, national origin, marital status, veteran status, or sexual orientation.

9.07. The Contractor warrants that it, and any subcontractor who performs any work for the Contractor under this Agreement, will at all times comply with all federal immigration laws and regulations that relate to its employees and with Arizona Revised Statutes section (A.R.S. §) 23-214 (A). The Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that the County retains the legal right to inspect the papers of any employee who works on the Agreement to ensure compliance with this warranty.

- The Contractor shall advise each subcontractor of the County's rights, and the subcontractor's obligations, under this section by including a provision in each subcontract substantially in the following form.
- "The subcontractor hereby warrants that it will at all times during the term of this agreement comply with all federal immigration laws applicable to the subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). The subcontractor further agrees that the County may inspect the

- subcontractor's books and records to ensure that the subcontractor is in compliance with these requirements. Any breach of this paragraph by the subcontractor will be deemed to be a material breach of this agreement subjecting subcontractor to penalties up to and including suspension or termination of this agreement."
- If a subcontractor's subcontract is suspended or terminated, the Contractor shall either self-perform the service under the subcontract or retain a replacement subcontractor.
 - Any additional costs attributable directly or indirectly to remedial action under this section shall be the responsibility of the Contractor.

9.08. Neither Party's waiver of the other's breach of any term or condition contained in this Agreement shall be deemed a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

9.09. This Agreement is available to public procurement units as a cooperative purchasing agreement pursuant to A.R.S. § 41-2632. The County shall not be responsible for any disputes arising out of transactions made by others and shall not be liable for any violation of this Agreement by, or the actions or inaction of, an eligible procurement unit related to this Agreement. Receipt, inspection and payment for materials and services cooperatively procured under this Agreement shall be the exclusive obligation of the procuring agency. The procuring agency shall not use this Agreement to obtain additional concessions or reduced prices for similar materials and services. The failure of the eligible procurement unit to secure performance from the Contractor in accordance with the terms and conditions of its purchase order does not necessarily obligate the County to exercise its own right or remedies.

9.10. The Contractor shall keep fully informed of and at all times observe and comply with all federal and state laws, all local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work, including without limitation the Drug-Free Workplace Act, Americans with Disabilities Act, Occupational Safety and Health Act, and all other applicable laws. The Contractor shall defend, hold harmless and indemnify the County, its representatives and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or by any of the Contractor's subcontractors or suppliers, or by any of their employees.

9.11. The Contractor shall take all necessary precautions for the safety of employees on the work site and other persons who may be affected thereby, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the work, all necessary safeguards and traffic control devices for the protection of workmen and the public and shall post danger signs warning against the hazards created by the construction, including, without limitation, operating or parked equipment, obstructions, changes in grade, scaffolding, excavations and falling materials.

9.12. The Contractor warrants it is fully familiar and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641 - 678, or as amended or recodified from time to time), and the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R 1910.- 1200, or as amended or recodified from time to time), as promulgated by the federal government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Act and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Article 8 above.

9.13. This Agreement is subject to the provisions of A.R.S. § 38-511, which provides for termination in certain instances involving conflicts of interest.

9.14. The Contractor certifies that it is not currently engaged in and agrees for the duration of the Agreement to not engage in, a boycott of Israel as defined by A.R.S. §35-393.

9.15. [SIGNATURE PAGE FOLLOWS]

The Humane Society of Southern Arizona, Inc. and Cochise County have executed this Agreement as of the dates set forth below:

COCHISE COUNTY

Ann English, Chair
Board of Supervisors

Date

ATTEST:

Kim Lemons, CPCC
Clerk of Board of Supervisors

Date

APPROVED AS TO FORM:

Kris Carlson
Civil Deputy Cochise County Attorney

Date

The Humane Society of Southern Arizona, Inc

By: 

Stephen J Farley

23 July 2021

Date

Its: CEO

Exhibit A – Fee Schedule

Description of Services	FY22 Fee
Animal Sheltering Services¹	
Dog intake	\$60 per animal
Cat intake	\$60 per animal
Other Services (in rare cases)	
Euthanasia w/cremation <i>If animals come to us with incurable medical or behavioral conditions</i>	\$130 per animal