

ANIMAL SHELTERING SERVICES AGREEMENT

THIS ANIMAL SHELTER AND ANIMAL CONTROL SERVICES AGREEMENT

("Agreement") is made and entered into this ____ day of _____, 2023, by and between the CITY OF LA HABRA, a municipal corporation (hereinafter referred to as "City"), and THE HUMANE SOCIETY OF POMONA VALLEY INC. dba INLAND VALLEY HUMANE SOCIETY & S.P.C.A., a nonprofit corporation (hereinafter referred to as "Humane Society").

WHEREAS, the purpose of entering into this Agreement is to contract for animal sheltering services with Humane Society under the terms and conditions as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, it is mutually agreed by and between City and Humane Society (hereinafter "Party," individually, or "Parties," collectively), as follows:

1. **Humane Society Services:**

(a) **Generally:** The services to be performed by Humane Society pursuant to this Agreement include the maintenance and operation of an animal shelter in compliance with California law, and the services set forth in Exhibit 1 attached to this Agreement.

2. **Non-Discrimination:**

Humane Society is an equal opportunity employer and subject to, and in compliance with, applicable State and Federal Anti-Discrimination laws. Humane Society does not discriminate on the basis of race, color, national origin, religion, marital status, ancestry, disability, sex, sexual orientation, age, genetic information, veteran status or any other protected class.

3. **Cooperation with Health Department:**

Humane Society agrees to cooperate with the California Department of Health Services and the health departments of all governing counties in matters pertaining to rabies and animal quarantine. In cooperation with the state and local health departments, Humane Society will conduct animal inoculation programs as required.

4. **Cooperation and Correspondence:**

(a) **Cooperation:** City agrees that its departments, employees and agents will cooperate with Humane Society in the performance of the services to be performed by Humane Society under this Agreement. City's cooperation includes promoting Humane Society programs and services through its social media, City website and City Newsletters. City agrees to provide information or feedback requested by Humane Society in a timely manner so that Humane Society can fulfill its legal and contractual obligations. City further agrees that its employees and agents will not interfere with Humane Society's performance of the services set forth in this Agreement. Each Party agrees not to make false or defamatory comments about the other Party in order to have and promote a positive working relationship for the duration of this Agreement.

(b) **Designated Representatives:** City designates as the sole representative of City, its city manager or the person designated by the city manager to work with Humane Society in all matters involving the implementation of this Agreement. Humane Society will designate a contract liaison at the time this Agreement is executed. The contract liaison shall be the person identified in Paragraph 22 (Notice), below. To the extent possible, and except in the

case of an emergency, all correspondences between the Parties should be initiated between their designated representatives, who are identified in the “Notice” section below. In the event of an emergency or after-hours, correspondence from the City to Humane Society should be initiated through the after-hours phone number. If either Party changes their designee, notice shall be provided to the other in writing before the new designation becomes effective.

(c) **Notice:** In conjunction with Paragraphs 14 and 22, the City agrees that it shall contact any of the following persons in the event of concerns regarding handling of services, any part of this Agreement, or any alleged default or breach of this Agreement:

- (i) Humane Society’s designated contract liaison; or
- (ii) The President/CEO of Humane Society

The City shall not claim any default or breach of this Agreement unless and until it has contacted one of the Humane Society representatives listed above, as shown in an email or other written correspondence and given the Humane Society representative adequate time to respond, consistent with Paragraph 15, below.

5. Compensation Paid to Humane Society:

In exchange for Humane Society performing the duties set forth herein, City agrees to compensate Humane Society in the following manner:

(a) Humane Society shall receive and retain all payments received for impound fees, redemption charges, and daily food and care fees collected pursuant to the animal shelter services performed for City. City shall retain all animal license fees for City’s animals, which shall be collected by IVHS upon redemption of owned animals and deducted from the amount due to Humane Society by City, as shown as a credit on the monthly invoice.

(b) **Annual Fee to Humane Society:** In addition to the revenues identified in paragraph 5(a) above, City shall pay Humane Society for the fiscal year of July 1, 2023 to June 30, 2024, the sum of one hundred and ten thousand dollars (\$110,000.00) payable in equal monthly payments of nine thousand one hundred and sixty-six dollars and sixty-seven cents (\$9,166.67) commencing on July 1, 2023 and continuing each month thereafter on or before the first day of the month, up to and through June 30, 2024. Thereafter, compensation shall be calculated as outlined in the following table:

FY	base	negotiated annual fixed fee increase		3% annual fee adjustment	final annual fee
23-24	\$75,987	\$35,000	\$110,987	\$0	\$110,987
24-25	\$110,987	\$35,000	\$145,987	\$4,380	\$150,367
25-26	\$150,367	\$35,000	\$185,367	\$5,561	\$190,928
26-27	\$190,928	\$35,000	\$225,928	\$6,778	\$232,705
27-28	\$232,705	\$35,000	\$267,705	\$8,031	\$275,737

(c) **Invoices and Payments:** Humane Society will provide City with a monthly invoice. Payment of the invoice is due no later than fifteen (15) days after receipt of the invoice. If City does not pay the Humane Society’s invoice in a timely manner, a late fee of \$100 shall be assessed. If Humane Society must take action to collect any outstanding fees and is deemed the prevailing party in such dispute, City shall be responsible for and shall pay all reasonable fees and costs associated with collections, including legal fees and court costs pursuant to Section 18 below.

(d) **Consumer Price Index Increase:** The Annual Fee paid to Humane Society shall automatically increase effective July 1, 2024, and each July 1st of each subsequent year, during the term of this Agreement by an amount equal to the Consumer Price Index (CPI) of three percent (3%) as outlined in 5(b) above. Each subsequent year beyond the initial term, the contract will increase by the annual percentage increase in the Consumer Price Index – All Items for All Urban Customers, Los Angeles-Long Beach-Anaheim (“CPI”). The percentage increase is determined by comparing the published monthly index for December to the prior year index for December, at a minimum of three percent (3%) and up to the maximum of five percent (5%) of the previous year’s Annual Fee paid to Humane Society. There shall be no reduction in the amount due to Humane Society if the CPI is negative.

6. Availability of Service:

(a) **Animal Shelter Hours:** Humane Society office hours are 8:30 a.m. to 5:30 p.m. Monday, thru Saturday. City shall use the after-hours telephone number in the event of an emergency. The emergency number the City should use is 909-594-9858, or any other telephone number Humane Society provides to City from time to time under the notice provisions set forth herein.

(b) **Closure:** Humane Society is closed on Sunday and most major holidays. Any changes to Humane Society office or shelter hours shall be promptly communicated to City and this Paragraph 7 of the Agreement shall be deemed revised accordingly.

7. Books and Records:

Humane Society shall maintain books of expenditures and revenues received regarding services provided to City according to its established retention policy. Such records and books shall be made available for inspection upon City request at Humane Society’s office during regular business hours within a reasonable time following the request by City. City shall not have any contractual right to control Humane Society books or records. If costs are incurred in order to comply with a City request to inspect records and books, such costs shall be documented by Humane Society and reimbursed to Humane Society by City upon request by Humane Society, within 30 days.

8. Indemnification and Hold Harmless:

(a) Humane Society represents that it possesses the necessary qualifications to perform the services and duties set forth in this Agreement and shall perform the services and duties consistent with the standard of care in the industry generally recognized in the State of California.

(b) Humane Society, its employees, agents and subcontractors are not employees of City. Humane Society is an independent contractor and shall have no authority to bind City or to create or incur any obligation on behalf of, or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in a writing signed by the Parties.

(c) Humane Society shall indemnify, defend and hold harmless, City, its elected and appointed officials, officers, agents and employees (collectively “Indemnitee”) from and against any and all liabilities, losses, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, costs and expenses of litigation, including reasonable attorneys’ fees (“Claim”), which Indemnitee may become subject to by reason of or arising out of any personal injury, death or property damage caused by Humane Society, by and through its agents, officers, directors or employees while performing under this

Agreement. However, if the Claim arises as a direct result of the City's negligence or willful misconduct, then City shall indemnify, defend and hold Humane Society harmless in the manner set forth herein, including Humane Society's officers, directors, employees and agents.

(d) In the event that any action or proceeding is brought against Indemnitee by reason of any of the matters against which Humane Society has agreed to indemnify Indemnitee, Humane Society, upon notice from City, shall agree to defend Indemnitee at Humane Society's expense by competent legal counsel of Humane Society or its insurance carrier's choosing. Humane Society shall not be obligated to pay for independent legal counsel retained by City if Humane Society makes competent legal counsel available to City. City agrees to notify Humane Society within five (5) days of its receipt of notice or service of legal process by a third party regarding a Claim allegedly caused by the acts or omissions of Humane Society, its agents, officers, directors or employees, acting within the scope of this Agreement. In the event of a Claim caused by City's officials, agents or officers, City agrees to defend Humane Society in the same manner as set forth in this Paragraph 9(d).

(e) Humane Society's indemnification under this Agreement does not extend to liabilities, losses, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, costs and expenses of litigation, including attorney's fees, which Indemnitee may suffer or incur or which Indemnitee may become subject to by reason of or arising out of any injury to or death of any person(s), damage to property, or loss of use of property caused by the negligence or willful misconduct of City, its elected and appointed officials, officers, agents, employees, volunteers or representatives.

(f) The insurance required to be maintained by Humane Society under Paragraph 10 shall ensure Humane Society's obligations under this Paragraph 9, however the limits of such insurance shall not limit the liability of Humane Society hereunder. The provisions of Paragraph 9 shall survive the expiration or earlier termination of this Agreement.

9. **Insurance:**

Humane Society shall, at its expense, procure and maintain insurance against Claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services set forth in this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII.

Humane Society shall maintain the following minimum scope and limits of insurance:

(a) **Minimum Scope of Insurance:** Coverage shall be at least as broad as the latest version of:

- *General Liability:*
Insurance Services Office Commercial General Liability Coverage (form CG 0001).
- *Automobile Liability:*
Insurance Services Office Business Auto Coverage (form CA 001, code 1 (any auto)).
- *Workers' Compensation and Employers' Liability:*
Workers' Compensation insurance as required by the State of California and Employers' Liability Insurance.
- *Errors and Omissions Liability:*
Insurance appropriate to Humane Society's profession.

(b) **Minimum Limits of Insurance:** Limits no less than:

- *General Liability:*
- \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities associated with this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- *Automobile Liability:*
- \$2,000,000 per accident for bodily injury and property damage.
- *Workers' Compensation and Employers' Liability:*
- Workers' Compensation limits as required by the Labor Code of the State of California. Employers' Liability limits of \$1,000,000 per accident for bodily injury or disease.
- *Errors and Omissions Liability:*
- \$1,000,000 per claim.

(c) **Other Provisions:**

- (i) **All Policies:** Each insurance policy required by Paragraph 10 shall be endorsed and state that the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

Any failure to comply with the reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, its officers, officials, employees or volunteers.

Any deductibles or self-insured retentions must be declared to and approved by City.

- (ii) **General Liability and Automobile Liability Insurance:** City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds for liability arising out of the services provided by Humane Society as set forth in this Agreement; premises owned, occupied or used by Humane Society; or automobiles owned, leased, hired or borrowed by Humane Society. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials or employees.

Humane Society insurance shall be primary insurance with respect to City, its officers, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, employees or volunteers shall apply in excess of, and not contribute with, Humane Society's insurance.

Humane Society's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of insurer's liability.

- (iii) **Subrogation:** The Parties agree to waive all rights of subrogation against the other, including their officers, officials, directors, employees and agents for losses arising from this Agreement, which are covered by insurance.
- (iv) **Certificates of Insurance:** Humane Society agrees to deposit with City,

at or before the effective date of this Agreement, certificates of insurance sufficient to satisfy City that the insurance provisions of Paragraph 9 of this Agreement have been complied with. The City attorney may require that Humane Society furnish City with copies of original endorsements effecting coverage as required by Paragraph 10 of this Agreement. The certificates or endorsements must be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

10. Term:

This Agreement shall be for five (5) years, commencing on July 1, 2023 and shall expire on June 30, 2028 (“Term”).

11. Term Renewal:

Unless either Party gives express written notice of its intent to terminate this Agreement at least three hundred and sixty (360) days prior to the scheduled expiration date of the initial Term, it shall automatically renew for a successive one (1) year term. Thereafter, the Agreement shall automatically renew for one (1) year for each successive term (“Term Renewal”) until terminated in writing by one of the Parties as provided in Paragraph 12 or modified by the Parties in writing.

12. Termination:

After the completion of the initial Term, either Party, at any time, may terminate this Agreement without cause upon the giving of no less than one hundred eighty (180) days prior written notice to the other Party of the intent to terminate. This notice shall include the date of termination which shall be no less than one hundred eighty (180) days following the date of the notice. In the event of such a termination, Humane Society shall be paid for all work performed under the Agreement through the date of termination. In the event that the Agreement is terminated, Humane Society will cooperate with City in transferring the animals sheltered to any provider chosen by City to perform the animal sheltering services. The additional expenses of transferring the animals include, but are not limited to, the actual cost of identification and relocation of animals, transfer of records, including medical records, and other costs related to the transfer of the responsibility for animal sheltering services from Humane Society.

13. Renegotiation Upon Occurrence of Certain Events:

(a) **Renegotiation Following Passage of Other State or Local Legislation with Fiscal Impact on Animal Control Services:** The Parties agree to renegotiate this Agreement upon the passage of any state or local legislation that has a fiscal impact on animal sheltering or animal care services.

14. Opportunity to Cure:

In the event of an alleged breach of this Agreement by either Party, express written notice containing an explanation of the alleged breach must be provided to the allegedly breaching Party within ten (10) days of the alleged breach or reasonable discovery of the alleged breach. The alleged breaching Party must be given a reasonable time to cure following the written notification, if the time to cure is not already contained in this Agreement. Unless otherwise set forth herein, a reasonable time to cure shall be considered thirty (30) days, however, in the event the breach cannot be cured in said time frame, the breaching party

must have made efforts to cure within 30 days and must provide a reasonable time frame for completion of the necessary cure. In no case will this Agreement terminate automatically based on the allegations of breach by one of the Parties. Notwithstanding the above, if City fails to pay for services for three or more consecutive months, Humane Society has the right to terminate this Agreement upon thirty (30) day notice.

15. Merger and Integration Clause:

This Agreement and Exhibit 1 attached hereto contain the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto.

16. Severability Clause:

If any provision of this Agreement is held to be unenforceable, then such provision will be modified to reflect the Parties' intentions. All remaining provisions of this Agreement shall remain in full force and effect.

17. Prohibition Against Transfers:

Neither Party may assign or otherwise transfer or delegate any right or duty under this Agreement without the express written consent of the other Party. Any attempt to do so without the express written consent of both Parties shall be null and void and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment or transfer.

18. Attorneys' Fees:

In any litigation, arbitration or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract or tort) or seeks to enforce an equitable right, including a declaration of a Party's rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorney's fees and all costs incurred in the matter.

19. Force Majeure:

Neither Party will be considered to be in default of this Agreement as a result of events beyond their reasonable control. For purposes of this Agreement, such events shall include, but are not limited to, acts of God, terrorism, war, catastrophe, pandemic, forced government shut-down, or other similar "force majeure" events beyond the Parties' reasonable control.

20. Authorized Parties:

Each Party to this Agreement has the authority to enter into and form this Agreement. The individuals signing this Agreement have the authority to act as agents of their respective organizations. Each Party acknowledges that they have read the Agreement and will abide by the terms set forth herein. The Parties acknowledge that they have each been represented by an attorney of their choosing. All statutory presumptions regarding drafting of this Agreement are waived, and there shall be no statutory presumption in favor of one Party or against another Party, including regarding ambiguity or interpretation.

21. Choice of Law:

This Agreement shall be governed by and construed in all respects in accordance with the

laws of the State of California. In the event of legal action regarding this Agreement, venue shall be in the County of Los Angeles.

22. Notices:

A notice required or desired to be given pursuant to this Agreement shall be given in writing and sent by US Mail with tracking capacity or by a delivery service, such as FedEx or UPS, or by email, addressed as follows:

<u>For City</u>	<u>For Humane Society</u>
_____	MaryAna DeLosSantos
_____	Director of Operations
_____	500 Humane Way
_____	Pomona, CA 91766
_____	(909) 706-4601
_____	mdelossantos@ivhsspca.org

Any notice given by a Party shall be considered served on the other Party three (3) business days after the date of mailing, unless it was specifically sent overnight, in which case it shall be deemed served the next business day. Any notice provided by email shall be deemed given that day if it is delivered before 4:30 pm and the next business day if delivered after 4:30 pm. The person or address (physical or electronic) for notice may be changed by giving written notice of such change pursuant to this Paragraph.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated the day and year first above written.

CITY, a Municipal Corporation:

THE HUMANE SOCIETY OF POMONA VALLEY, INC. dba INLAND VALLEY HUMANE SOCIETY & SPCA, a California Non-Profit Corporation:

By: Mayor

By: President/CEO

Date

Date

By: City Clerk

By: Secretary

Date

Date

APPROVED AS TO FORM:

Dated: _____

City Attorney

EXHIBIT 1

Services Provided by Humane Society

1. Sheltering Services:

- (a) Food, care, behavior enrichment and medical treatment for animals.
- (b) Humane euthanasia for sick, injured or animals that are irremediably suffering.
- (c) OBS (Dog Bites) housing, protective custody housing for PD impounds, pending court cases, and other special housing as mutually determined by the City and Humane Society.

2. Rabies Control:

- (a) Humane Society will provide:
 - (i) Low-cost rabies vaccination clinics.
 - (ii) Rabies vaccinations provided for redeemed or adopted animals.

3. Owned Animal Services/Fee for Service:

- (a) Humane Society will provide and may charge a fee for:
 - (i) Euthanasia for owner-relinquished sick and/or injured animals.
 - (ii) Cremation services for deceased animals.
 - (iii) Adoption of owner-relinquished animals.
 - (iv) Special circumstance ambulance service for transport to veterinary hospital.

4. Miscellaneous Services Provided by Humane Society:

- (a) Microchips for all animal adoptions and owner redemptions.
- (b) Low-cost vaccine and microchip clinics.
- (c) Disaster response/temporary sheltering for displaced animals from the disaster.
- (d) Free adoptions for veterans and active military members.
- (e) Pet adoptions
- (f) Home-to-Home pet rehoming program

5. Humane Education:

- (a) Humane Society will provide education for responsible pet ownership or wildlife.
- (b) Humane Society will maintain a website and social media platforms available to City's constituents.
- (c) Humane Society may participate in community events and/or presentations to promote responsible pet ownership, wildlife education and adoptions.
- (d) Humane Society will participate in two (2) community events annually to promote adoptions and Humane Society programs and services.
- (e) Humane Society may use City logo in certain educational and promotional material.

Services Provided by City

1. Vaccinations:

- (a) All animals over six (6) weeks of age are to be vaccinated immediately upon arrival to the shelter by City Animal Control Officers. Humane Society shall train City Animal Control Officers to properly administer FVRCP for cats or DHPP and Bordatella for dogs. Rabies vaccinations will be performed by the Humane Society as needed. Humane Society shall have no liability for any negligence or misconduct by any employee, officer, representative or agent of the City regarding vaccinations administered by City Animal Control Officers of City animals.
- (b) It is further agreed and understood that if the City does not vaccinate an animal over the age of (6) weeks that it brings to the shelter due to safety concerns from the City Animal Control Officers, Humane Society will vaccinate the animal. The City must immediately notify Humane Society regarding the incident. If non-vaccination occurs repeatedly by the same officer or more than two times per week, City agrees to meet with Humane Society to provide a remedy to the situation as animal herd management is vital to the health of all animals in the shelter. Failure to remedy creates a breach in the agreement and Humane Society has a right to trigger termination pursuant to Section 11.