

ANIMAL SHELTER SERVICE AGREEMENT

Between the Town of Prescott Valley and Yavapai Humane Society

THIS AGREEMENT is made and entered into the 1st day of July, 2016, by and between THE TOWN OF PRESCOTT VALLEY, a political subdivision of the State of Arizona (hereinafter "TOPV") and the YAVAPAI HUMANE SOCIETY, an Arizona non-profit corporation (hereinafter "YHS").

WITNESSETH:

WHEREAS, the TOPV is authorized, pursuant to A.R.S. § 11-1013(A), to provide or authorize a TOPV pound or pounds or enter into a cooperative agreement with a TOPV, a veterinarian or an Arizona incorporated humane society for the establishment and operation of a TOPV pound; and

WHEREAS, the TOPV has determined that it is in its best interest to enter into an agreement with an authorized entity for the maintenance and operation of animal shelter facilities to house dogs and cats impounded by the TOPV; and

WHEREAS, YHS, an Arizona incorporated humane society, currently maintains and operates an animal shelter facility, which performs lost and found services (hereinafter the "Facility" or the "Lost and Found Center"); and

WHEREAS, the YHS has sufficient capacity in the Facility to house dogs and cats impounded by employees or agents for the TOPV and proposes that the TOPV enter into this agreement with YHS for housing of dogs and cats so impounded.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Operation of the Facility.** YHS shall establish and operate a Facility in accordance with the terms and conditions specified herein including, but not limited to, those set forth in Attachment A to this Agreement.
2. **Staffing.** YHS shall employ or otherwise provide sufficient qualified personnel as required to fully perform all services required pursuant to this Agreement.
3. **Effective Term.** The term of this Agreement shall commence on July 1, 2016, and shall terminate on June 30, 2017. Unless otherwise expressly provided herein, or otherwise agreed by the parties in writing, the rights and obligations of both Parties pursuant to this Agreement shall terminate as of the term.
4. **Payment by TOPV.** The parties' intent is for the TOPV to pay YHS for YHS's actual costs of providing the services under this Agreement during the 2016 calendar year. The parties recognize that term of this Agreement is not concurrent with the time period for which actual costs will be computed. The scope of actual costs contemplated by this

Agreement as reimbursable is limited to the specific operational costs identified in the following subsections. Such costs must also exclude capital equipment, project, or improvement costs.

- a. **Computation of Costs.** YHS operates an animal health clinic ("Clinic") in addition to the Facility. Portions of the Clinic's costs support the Facility's operations, and are therefore actual costs of providing services under of this Agreement. The parties agree that for the length of this Agreement:
- i. 20 percent of clinical supply costs,
 - ii. 77 percent of vaccination costs,
 - iii. 25 percent of veterinarian staff costs, and
 - iv. 30 percent of veterinarian technician staff costs are attributable to the Facility's operations. In addition,
 - v. 15 percent of YHS's administrative costs are attributable to the Facility's operations.

These percentages are fixed except as described in subsection 4.d, below. Attachment B describes the budgeted amounts of each of the above costs.

- b. **Budgeted and Initial Costs.** YHS budgets that the direct costs of operating the Facility during the 2016 calendar year ("direct costs") will be \$294,128. YHS further budgets that the additional clinical and administrative costs that are attributable to the operation of the Facility during the 2016 calendar year according to the percentage allocations in Section 4.a, above, ("clinical and administrative costs") will be \$164,539. Accordingly, YHS's budgeted total costs of operating the Facility ("total Facility costs") are \$458,667. YHS further budgets that 18.81% of its Facility's animal days will be attributable to activities under this Agreement. The budgeted estimated cost for the term of this Agreement is therefore the product of the budgeted estimated costs of operating the Facility and the percentage of animal days will be attributable to activities under this Agreement. Attachment B describes the budgeted amounts of each of the above costs.

- c. **Payment and Adjustment of Animal Day Percentage.** The TOPV will pay YHS \$6,169 each month from July, 2016 through March, 2017.
- i. On or before March 31, 2017, YHS shall submit its 2016 accounting to the TOPV, showing the actual proportion of animal days attributable to activities under this Agreement during the 2016 calendar year as well as the actual direct costs, actual clinical and administrative costs, and actual total Facility costs for the 2016 calendar year.
 - ii. The TOPV shall review YHS's 2016 accounting and calculation of the actual total cost of this Agreement, which shall be the product of the actual proportion of animal days attributable to activities under this

Agreement during the 2016 calendar year and the actual total Facility costs.

iii. In April 2017 through June 2017, the TOPV shall adjust its monthly payments so that the total amount paid to YHS over the term of this Agreement shall be the actual total cost of this Agreement.

d. **Modification of Clinical and Administrative Cost Percentages.** In the event that YHS significantly expands its operations other than the Facility during the term of the Agreement, the parties recognize that the percentages of the clinical and administrative costs identified in Section 4.a as attributable to the operations of the Facility may no longer be applicable. If the TOPV determines that such a significant expansion has occurred, the parties agree to renegotiate payment under the Section 4.c for the last three months of the Agreement. In the event that the parties do not agree to new percentages or payments following a significant expansion of YHS's non Facility operations, the actual clinical and administrative costs shall be deemed to be those budgeted in Section 4.b., and the actual total Facility costs shall be adjusted accordingly.

5. **Termination.** This Agreement may be terminated prior to its date of expiration as specified herein:

a. **Termination of Convenience.** This Agreement may be terminated at any time by either Party upon 90 (ninety) days' notice to the other party. Upon such termination, YHS shall be paid for services through the effective date of termination according to whichever provisions of the Section 4, above, are applicable for the time period for which services have been provided.

b. **Termination for Cause.** Unless otherwise specified herein, in the event of a breach of any term or condition of this Agreement, by either party, the Party claiming that a breach has occurred shall provide written notice to the breaching party, said notice to set forth the factual basis for the determination that a breach has occurred. If the breach is not wholly or substantially remedied within twenty (20) days of receipt of notice of breach, the Agreement shall terminate without further notice by the party claiming breach. Upon such termination, YHS shall be paid for services through the effective date of termination according to whichever provisions of the Section 4, above, are applicable for the time period for which services have been provided subject to any offsets to which the party claiming breach may be entitled as a result of acts or omissions giving rise to the claims of breach.

c. **Termination for Health or Safety of Impounded Animals.** If, at any time during the term of this Agreement or renewals thereof, the TOPV determines, upon good cause shown, that the health or safety of animals for which the TOPV is financially responsible pursuant to this Agreement are in imminent jeopardy, the TOPV may remove the subject animals without prior notice. Upon any such removal, the TOPV may, at its sole option, terminate this Agreement without

further notice. Upon such termination, YHS shall be paid for services through the effective date of termination according to whichever provisions of the Section 4, above, are applicable for the time period for which services have been provided subject to any offsets for those acts or omissions by YHS upon which termination pursuant to this section are based or other acts or omissions which may constitute breach.

6. **Independent Contractor.** In performance of the duties set forth herein, it is mutually understood and agreed that YHS and its employees, contractors, subcontractors or agents are at all times acting as independent providers of services provided pursuant to this Agreement. It is further understood and agreed that the TOPV shall not exercise control or direction over the methods by which YHS provides said services excepting that YHS does, by this Agreement, agree to perform said duties in strict accordance with legal, professional and ethical standards governing the provisions of said services.
7. **Assignments Prohibited.** YHS shall not assign this Agreement or any portion thereof, to any other Party without the express written consent of the TOPV. The execution of any agreement which purports to assign this Agreement or any portion thereof shall immediately void this Agreement. Notwithstanding this provision, YHS may enter into agreements with qualified providers of services for which YHS is responsible pursuant to this Agreement as long as such agreements do not purport to excuse YHS from its obligations to the TOPV as set forth herein.
8. **Insurance.** YHS will obtain and maintain policies of insurance of such kinds and in such amounts as required to protect the parties from claims and losses arising from the management and operation of the Facility pursuant to this Agreement and shall cause the TOPV to be named as an additional insured on such policies as the TOPV's interests dictate. Minimum coverages shall be as follows:
 - a. **Commercial General Liability Insurance:** to include premises liability coverage with a limit of not less than \$1,000,000 for each occurrence and an annual aggregate annual limit of not less than \$2,000,000.
 - b. **Commercial Automobile Liability Insurance:** with a combined single limit for bodily injury and property damage of not less than \$1,000,000 with respect to any owned, hired or non-owned vehicles assigned to or used in performance of the YHS's activities pursuant to this Agreement.
 - c. **Worker's Compensation Insurance:** to cover obligations imposed by federal and state statutes governing the activities of any persons employed or otherwise engaged by YHS to perform activities pursuant to this Agreement.

No less than twenty (20) days prior to the effective date of this Agreement, YHS will provide to the TOPV certificates of insurance and such other documentation as the TOPV may require confirming that the required coverages are in place for review and acceptance by the TOPV. At

least fifteen (15) days prior to any material changes in forms or amounts of coverage or any change in carriers providing such coverage, YHS shall provide written notification to the TOPV of such proposed change.

9. **Indemnification.** Notwithstanding the insurance provisions as set forth in Section 8 of this Agreement, YHS further agrees to defend, indemnify and hold harmless the TOPV, its agents, officers, officials and employees from and against any and all claims, damages, losses and expenses (including but not limited to, attorney fees, court costs and the cost of appellate proceeding), related to, arising out of, or alleged to have resulted from, the management or operation of the Facility pursuant to this Agreement.
10. **Conflicts of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511 pertaining to conflicts of interest, the provision of which are incorporated herein.
11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof. No modifications to the terms and conditions of the Agreement shall be binding upon the parties unless evidenced by a supplemental or substitute agreement in writing signed by the parties.
12. **Compliance with Law.** Both parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the “State and Federal Immigration Laws”). Both parties shall further ensure that each contractor who performs any work for either party under this Agreement likewise complies with the State and Federal Immigration Laws.
13. **Notices.** Notices to be sent pursuant to this Agreement shall be sent by certified mail, postage prepaid to the following addresses:

YHS
Executive Director
Yavapai Humane Society
1625 Sundog Ranch Road
Prescott, AZ 86301

TOPV
Prescott Valley Town Council
7501 E. Civic Circle
Prescott Valley, AZ 86314

With a copy to:

Prescott Valley Police Department
Attn: Chief of Police
7601 E. Civic Circle
Prescott Valley, AZ 86314

Duties of the Parties Pursuant to the Animal Shelter Service Agreement

Duties of YHS:

1. To maintain and operate a Facility with sufficient capacity and resources to meet the TOPV requirements.
2. To receive and care for cats and stray dogs brought to the Facility by the TOPV's animal control officers or stray dogs brought to the Facility by TOPV residents. To receive and care for impounded dogs and cats involved in bite case and when necessary to humanely euthanize animals not claimed or adopted or pursuant to Section 5, below.
3. To provide appropriate care and housing (as defined by A.R.S. § 11-1021) for all stray dogs for a period of seventy-two (72) hours or one hundred twenty (120) hours for a dog wearing a license (as defined by A.R.S. § 11-1013) unless claimed or surrendered by its owner. YHS may provide care and housing beyond the statutory time periods, but shall not count the costs of such additional care and housing as attributable to the TOPV when calculating the proportion of animal days which are attributable to activities under this Agreement unless directed by TOPV to do so.
4. To provide isolated confinement and quarantine (per A.R.S. § 11-1014) for dogs and cats that have bitten a human being. Quarantined dogs and cats shall remain in their original impound kennel and not be moved during the quarantine period. Quarantined dogs shall not share a kennel and will be housed in a full-sized kennel.
5. To determine the most humane disposition for any animal not reclaimed by its owner and for the final disposition of all animals. EXCEPTION: Animals determined by the TOPV to be an extreme danger or threat to the public will be euthanized by YHS at the end of the statutorily specified hold period, provided said animals have been surrendered to the TOPV by their owners for euthanasia, or there has been a finding that the animal is vicious by the TOPV. This determination will be based on documented aggressive behavior towards humans. The original impound card will be signed and documented with the date and time of euthanasia as well as the administering employee's signature. Subject to the indemnity obligations of YHS as set forth in Section 9 of this Agreement, the TOPV agrees to indemnify and hold YHS harmless from claims against YHS alleging wrongful destruction of an animal euthanized pursuant to TOPV direction made by the owner of that animal or by such other person with legal standing to bring suit based upon a claim of wrongful destruction of that animal to include costs and attorney's fees incurred by YHS in the defense of any such claim.
6. To permit authorized representatives of the TOPV to appear with or without notice to inspect Facility premises for the purpose of confirming YHS's compliance with the terms and conditions of the Animal Shelter Service Agreement.

7. To collect all fees imposed by this Agreement as set forth below (7a thru 7f) or as state statute requires. YHS will also remit license penalty fees to the TOPV on a monthly basis. YHS will not change current TOPV fees to animal owners without the consent of the TOPV. YHS shall retain all boarding fees.

FEE SCHEDULE:

- a. Impound \$30.00 (to be retained by YHS)
- b. Daily board \$15.00 (to be retained by YHS)
- c. Recovery Fee \$50.00 **(A.R.S. 11-1014, A.R.A. 11-1022)
- d. Altered dog license \$8.00 (\$6 to be remitted to TOPV and \$2 to be retained by YHS)
- e. Unaltered dog license \$35.00 (\$33 to be remitted to TOPV and \$2 to be retained by YHS)
- f. Return to owner fee \$30.00 (to be retained by YHS)

** Recovery fee cannot be charged for dogs that are licensed or altered at the time of impound. When a recovery fee is collected the animal owner will be given a voucher equal to the \$50.00 for the purpose of spaying or neutering that animal.

8. To separately handle feral cats.. A.R.S. §11-1013(C) provides:

Any impounded cat that is eligible for a sterilization program and that will be returned to the vicinity where the cat was originally captured may be exempted from the mandatory holding period required by this subsection. For the purposes of this subsection, "eligible" means a cat that is living outdoors, lacks discernible identification, is of sound health and possesses its claws.

The law leaves to the discretion of the animal control officer (ACO) to hold or not. Feral cats that are impounded will be spayed or neutered by YHS and returned to the impound location by the ACO. YHS will bill the TOPV per cat using the schedule below. The following costs are separate from and in lieu of the primary costs calculated in Section 4 of this Agreement, and the provision of these services shall not be counted as attributable to activities under this Agreement for the purposes of Section 4 of this Agreement:

- a. Neuter: \$25
- b. Spay: \$40
- c. Rabies Vaccination: \$10
- d. FRCP: \$10
- e. FEL/FIV Test: \$25
- f. Overnight Board if applicable: \$15 per night
- g. Actual medical costs as they occur.

9. To keep and maintain records for a period of twenty-four (24) months of all animals housed at the shelter pursuant to the Animal Shelter Agreement and to provide activity reports to the TOPV on a monthly basis that include the following information regarding all animals attributed to the TOPV for purposes of calculating the cost of services per this Agreement:
 - a. Animal ID number as assigned by YHS
 - b. License number including issuing jurisdiction
 - c. Name of TOPV employee delivering animal to YHS
 - d. Animal name
 - e. Species
 - f. Primary and secondary breed
 - g. Gender
 - h. Age group
 - i. Intake date
 - j. Intake type
 - k. Intake subtype
 - l. Found address
 - m. Outcome date
 - n. Outcome type
 - o. Outcome subtype
 - p. A report of all fees collected broken down by type

Duties of the TOPV:

1. To patrol the TOPV and to enforce all applicable state and TOPV statutes and ordinances.
2. To deliver all stray dogs impounded by TOPV animal control officers to the Facility.
3. To provide emergency care for animals impounded by TOPV animal control officers outside the Facility's normal hours of operation (8:00 a.m. to 5:00 p.m. Monday through Friday) and legal holidays.
4. To release to YHS for final disposition any stray dog or cat not reclaimed by its owner within the established stray hold time.