

ANIMAL SHELTERING
SERVICE AGREEMENT

THIS AGREEMENT, made this 28th day of June, 2012 by and between the Town of Prescott Valley, a municipal corporation of Arizona (“Town”), and the Yavapai County Humane Society, a non-profit corporation of Arizona (“Contractor”);

WITNESSETH:

WHEREAS, the Town is authorized to prohibit animals at large under ARS §9-240(16), and has adopted Chapter 6 in its Town Code to regulate and control animals located within the Town limits; and

WHEREAS, the Town has the choice of hiring its own staff or entering into contracts with third parties to provide the related services [Town of Tempe v. Corbell, 17 Ariz. 1 (1915)]; and

WHEREAS, shortly after its incorporation, the Town entered into an agreement with the Contractor (June 14, 1979) to provide for impoundment and observation of stray animals, application of rabies shots, and animal licensing; and

WHEREAS, on April 10, 1980, the Town first hired its own animal control officers; and

WHEREAS, on February 26, 1987, the Town entered into an agreement with Kachina Animal Hospital for animal sheltering services; and

WHEREAS, on July 1, 2004, the Town entered into an intergovernmental agreement with the City of Prescott for animal sheltering services; and

WHEREAS, in June of 2009 the City of Prescott notified the Town of its intention to terminate the intergovernmental agreement with the Town and enter into an agreement with the Yavapai County Humane Society to provide animal sheltering services to Prescott; and

WHEREAS, the Town was desirous of entering an agreement for animal sheltering services with Yavapai county Humane Society; and

WHEREAS, stray animals in the Town represent a public health, safety and welfare risk to the peace and quiet enjoyment of private property; and

WHEREAS, animals at large and biting animals represent a public health, safety and welfare risk to the citizenry who may come into contact with them; and

WHEREAS, the Contractor offered to provide personnel and facilities needed to provide

animal sheltering services on a regional basis; and

WHEREAS, the Contractor has long-term expertise in providing effective and humane animal sheltering services;

WHEREAS, on June 25, 2009 the Town entered into an agreement with Yavapai County Humane Society to provide animal sheltering services from July 1, 2009 to June 30, 2011; and

WHEREAS, on May 12, 2011, The Town renewed that agreement with Yavapai County Humane Society to provide animal sheltering services from July 1, 2011 to June 30, 2012 which contained an automatic renewal for additional one-year terms without a mechanism for considering increases or decreases in the costs of providing shelter services ; and

WHEREAS, the parties agree that under the 2011/2012 agreement all shelter services were satisfactorily provided and consideration for such services has been rendered; and

WHEREAS, it is the intent of the parties to enter into a new agreement for fiscal year 2012/2013 which allows for a review of annual costs under future agreements for shelter services.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. That Contractor shall provide those services to the Town as more particularly identified in the attached Exhibit "A" which is incorporated into this Agreement.

2. In addition to those services identified in Exhibit A, the Contractor shall perform all subordinate tasks necessary to the full and effective performance of the tasks specifically referenced. In the event of a discrepancy between this Agreement and Exhibit A, this Agreement shall control.

3. The Contractor shall provide sufficient qualified personnel to perform any and all services required herein including, but not limited to, preparation of reports as reasonably requested by representatives of the Town.

4. (A) The term of this Agreement shall be from July 1, 2012 to June 30, 2013. All services identified in Sections 1, 2, 3 and Exhibit A shall be completed to the satisfaction of the Town.

(B) Notwithstanding the foregoing, this Agreement may be terminated by either the Town or the Contractor upon ninety (90) days' written notice, with or without cause. If this Agreement is so terminated, the Contractor shall be paid for services performed up to the date of termination.

5. Performance of the services hereunder shall be at the premises located at 1605 Sundog Ranch Rd, Prescott, Arizona, unless another location is mutually agreed-to by the parties. The Contractor shall be responsible for all monthly utility payments for such facilities and the maintenance, repair and replacement of structures and mechanical systems.

6. Pursuant to ARS §38-511, the Town may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the Town is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the Contractor with respect to the subject matter of the Agreement.

7. Any notices to be given by either party to the other must be in writing, and personally delivered or mailed by prepaid postage and certified mail, at the following addresses:

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

Contractor: Ed Boks, Exec. Director
Yavapai County Humane Society
1625 Sundog Ranch Rd.
Prescott, AZ 86301

8. It is expressly agreed and understood by and between the parties that the Contractor is an independent contractor and, as such, the Contractor shall not become a Town employee and is not entitled to payment or compensation from the Town or to any fringe benefits to which other Town employees are entitled. As an independent contractor, the Contractor further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Contractor further agrees that it will conduct itself in a manner consistent with such status, and it will neither hold itself out nor claim to be an officer or employee of the Town by reason thereof. Further, it will make no claim, demand or application to or for any right or privilege applicable to any officer or employee of the Town including, but not limited, to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

9. This Agreement is non-assignable by the Contractor.

10. (A) The Town shall pay to the Contractor a total sum of \$58,500 per year for the complete performance of all services specified in Sections 1, 2, 3 and Exhibit A of this Agreement. Payment shall be made in the amount of \$4,875 per month.

(B) The Contractor shall bill the Town and the Town shall pay such billings within thirty (30) days of the date of their receipt.

(C) Payment of the total amount provided for under Subsection 10(A) shall not relieve the Contractor of its obligation to complete the performance of all those services specified. Should the Town request in writing additional services beyond those specified herein, the Contractor shall charge and the Town shall pay a mutually-agreed-to additional fee.

(D) Prior to the final payment to the Contractor, the Town shall deduct therefrom any and all unpaid privilege, license and other taxes, fees, and any other unpaid monies due the Town from the Contractor, and shall apply those monies to the appropriate account. The Contractor shall provide to the Town any information necessary to determine the total amount(s) due.

11. This Agreement is the result of negotiations by and between the parties. Any ambiguity is not to be construed against either party by virtue of its having had primary responsibility for drafting.

12. This Agreement shall be construed under the laws of the State of Arizona.

13. This Agreement and Exhibit A represent the entire and integrated Agreement between the Town and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Contractor. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein. Provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

14. In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition, or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

15. The Contractor hereby agrees to indemnify and hold harmless the Town, its departments and divisions, its employees and agents, for, from and against any and all claims, liabilities, expenses or lawsuits to the fullest extent allowed by law as a result of the Contractor's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the Contractor or its agents. The Contractor further releases and discharges the Town, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the Town, from any and all claims which the Contractor has or may have against the Town, its agents or employees, arising out of or in any way connected with the Contractor's activities as set forth herein, other than those acts which occur due to the negligence of the Town, its employees or agents.

16. The Contractor shall obtain and maintain in effect during the term of, and until final acceptance of all work under, this Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor. The Contractor's insurance shall be primary as respects the Town, and any other insurance maintained by the Town shall be excess and non-contributing with the Contractor's insurance.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

(A) MINIMUM SCOPE AND LIMITS OF INSURANCE – The Contractor shall provide coverage with limits of liability not less than those stated below.

(1) Commercial General Liability – Policy shall include bodily injury, property damage, and broad form contractual liability.

General Aggregate - \$2,000,000
Products – Completed Operation Aggregate - \$1,000,000
Personal and Advertising Injury - \$1,000,000
Each Occurrence - \$1,000,000

The policy shall be endorsed to include the following additional insured language: “The Town of Prescott Valley shall be named as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including completed operations.”

(2) Automobile Liability – Bodily injury and property damage for an owned, hired, and non-owned vehicles used in performance of this Agreement.

Combined Single Limits (CSL) - \$1,000,000

(3) Worker's Compensation and Employer's Liability

Worker's Compensation - Statutory
Employer's Liability – Each Accident - \$100,000
Disease – Each Employee - \$100,000
Disease – Policy Limit - \$500,000

Policy shall contain a waiver of subrogation against the Town.

(B) The Contractor shall place insurance with a current A.M. Best's rating of no less than A-VII, unless otherwise approved in writing by the Town. The Contractor shall place General Liability, Automobile Liability, and Worker's Compensation insurance with an insurer

admitted in the State in which operations are taking place.

(C) The Contractor shall furnish the Town with copies of the original endorsements affecting the coverage required herein. The Contractor shall also provide the Town with certificates of insurance for all required coverages. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Town shall approve all certificates/endorsements before the work (Agreement) commences.

(D) All insurance and bonds required pursuant to this Agreement must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in ARS §20-217, a copy of which certificate is to be attached to each applicable bond or binder.

(E) Prior to commencing work under this Agreement, the Contractor shall provide the Town with evidence that it is either a "self-insured employer" or a "carrier insured employer" for Workers' Compensation as required by ARS §23-901 et seq., or that it employs no persons subject to the requirement for such coverage.

17. The Contractor, with regard to the work performed by it after award and during its performance of this Agreement, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

18. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties waives any right to a trial by jury. In the event of litigation, the parties agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the work which is the subject of this Agreement. The parties further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Agreement, pursuant to ARS §12-341.01(A) and (B), or pursuant to any other state or federal statute. The Contractor further agrees that this provision shall be contained in all subcontracts related to the work that is the subject of this Agreement.

19. The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with ARS §34-301, "Employment of Aliens on Public Works Prohibited," and ARS §34-302, as amended, "Residence Requirements for Employees."

Under the provisions of ARS §41-4401, the Contractor hereby warrants to the Town that the Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with all federal immigration laws and regulations that relate to their employees and ARS §23-214(A) (hereinafter “Contractor Immigration Warranty”).

20. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Contractor to penalties, up to and including termination of this Agreement, at the sole discretion of the Town.

The Town retains the legal right to inspect the papers of any Contractor (or subcontractor’s) employee who works on this Agreement to ensure that the Contractor (or subcontractor) is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the Town with any such inspections.

The Town may, at its sole discretion, conduct random verification of the employment records of the Contractor (and any of its subcontractors) to ensure compliance with the Contractor’s Immigration Warranty. The Contractor agrees to assist the Town with any random verifications performed.

Neither the Contractor (nor any subcontractor) shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor (or subcontractor) establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by ARS §23-214(A).

The provisions of this Section must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. “Services” are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

The signatories to this Agreement have authority to bind their respective organizations.

DATED this ___ day of _____, 2012.

TOWN OF PRESCOTT VALLEY

HARVEY C. SKOOG, Mayor

ATTEST:

APPROVED AS TO FORM:

DIANE RUSSELL, Town Clerk

IVAN LEGLER, Town Attorney

DATED this ____ day of _____, 2012.

YAVAPAI COUNTY HUMANE SOCIETY

Ed Boks, Executive Director

STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this ____day of _____, 2012, by Harvey C. Skoog, Mayor of the Town of Prescott Valley, Arizona, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed it for the purposes therein contained and, that (s)he has the authority to so execute.

[Seal]

Notary Public

STATE OF ARIZONA)
) ss.
COUNTY OF YAVAPAI)

The foregoing instrument was acknowledged before me this ____day of _____, 2012, by Ed Boks, Executive Director, Yavapai Humane Society, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed it for the purposes therein contained and, that (s)he has the authority to so execute.

[Seal]

Notary Public

EXHIBIT "A"

The Contractor will provide animal sheltering services to the Town.

The Contractor will receive from Town officers and care for animals which violate Town Code Chapter 6, including impound animals involved in bite cases, and humanely euthanize animals not claimed or adopted, or as ordered by a court.

The Contractor agrees to provide appropriate care and housing (as defined by ARS §11-1021) for animals at large for a period of seventy-two (72) hours (as defined by ARS §11-1013) unless reclaimed by their owners.

The Contractor agrees to provide confinement and quarantine (per ARS §11-1014) for any animals that have bitten persons or other animals.

The Contractor agrees to determine the most humane disposition for any animal not reclaimed by its owner. The Town reserves a general right to appear without notice from time to time and inspect the Contractor's work in performance of duties under this Agreement.

The Contractor agrees to collect all fees imposed by applicable Town provisions including, but not limited to, license fees, room and board fees for animals held at the shelter, and redemption fees. The Contractor shall remit said fees to the Town on a monthly basis. (This does not include any applicable boarding fees paid directly to the Contractor).

The Contractor will keep and maintain records, for a period of twelve (12) months, of all animals brought to the shelter and provide monthly reports to the Town. The reports shall include:

- The number of animals brought in by the Town's animal control or other officers,
- The description of animals brought to it (by license number, if available),
- The name of the animal control or other officer bringing in animals,
- The date of admission and date of discharge of animals,
- The disposition of animals (i.e., euthanized, picked up by owners, etc.),
- The redemption, license and rabies vaccination fees collected, and
- The number of animals brought in by Town residents.

The Town will:

- Patrol and enforce State and Town animal control provisions within the Town,

- Deliver animals in violation of Town Code Chapter 6 that come into its possession to the Contractor's facility (subject to reclamation by owners), and
- Be responsible for after-hours emergency care for animals picked up by Town officers (i.e. outside of normal hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, and holidays).