

**AGREEMENT FOR SHELTER AND ANIMAL CONTROL SERVICES BETWEEN THE CITY OF RAPID CITY AND THE HUMANE SOCIETY OF THE BLACK HILLS**

This Agreement for Shelter and Animal Control Services between the City of Rapid City and the Humane Society of the Black Hills (“Agreement”) is made and entered by and between the CITY OF RAPID CITY, a South Dakota municipal corporation, located at 300 Sixth Street, Rapid City, South Dakota 57701 (the “City”), and the HUMANE SOCIETY OF THE BLACK HILLS, a South Dakota non-profit corporation, with its principal place of business at 1820 East Saint Patrick Street, Rapid City, South Dakota 57703 (the “Society”). This Agreement is effective once signed by both of the parties to this Agreement.

**RECITALS**

WHEREAS, the City has a need to provide animal sheltering services and animal control services within the City of Rapid City; and

WHEREAS, the Society is a private, non-profit organization currently operating an animal shelter within the City of Rapid City; and

WHEREAS, the Society currently provides animal control services within the City of Rapid City; and

WHEREAS, the parties have previously been engaged in a mutually beneficial contract whereby the Society has provided animal shelter services and animal control services to the City; and

WHEREAS, the parties desire to continue their mutually beneficial association, and to enter into a contract for the continuation of the same.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, the parties agree as follows:

1. Term and Renewal. The term of this Agreement is from January 1, 2022 to December 31, 2022, unless terminated earlier as provided herein. Upon expiration of the initial term, this Agreement will automatically renew each year for a one year term unless either party notifies the other in writing of its intent not to renew the Agreement at least one hundred and twenty (120) days prior to the expiration of the current year term. Any future agreements between the parties shall be under the terms and conditions mutually agreed to by the parties at that time. This Agreement depends upon the continued availability of

appropriated funds and expenditure authority from the Common Council for this Agreement's purpose. If for any reason the Common Council fails to appropriate funds or grant expenditure authority, or if funds become unavailable by operation of law, this Agreement will be terminated by the City by written notice. Termination for any of these reasons is not a default or breach by the City nor does it give rise to a claim against the City.

2. Independent Contractor. Society is at all times an independent contractor and no relationship of agency is intended to be created by this Agreement. Society shall be solely responsible for employing the personnel necessary to provide the services required by this Agreement. Society shall furnish a list of all employees including title, and job description upon request of City. Society shall provide its own insurance at a minimum as required herein.
3. Society's Obligations. Society shall:
  - a. Maintain and operate a facility within the corporate limits of the City for the shelter of animals ("Shelter") in accordance with all applicable laws of the United States, the State of South Dakota, and the City of Rapid City. Maintain Shelter in accordance with contemporary standards for the humane treatment of animals. The Shelter shall be constructed so that animals of different kinds, sizes, and sexes may be segregated.
  - b. Serve as the City's Designated Animal Control Authority as detailed in Rapid City Municipal Code Title 6.
  - c. Endeavor to answer all calls for service within City limits, but not be required to maintain a dedicated dispatch employee. The Society shall have a message on its answering machine that directs callers to leave a message or dial 911 in case of an emergency.
  - d. Appoint and maintain competent and qualified animal control officers and other agents for carrying out the obligations under this Agreement. Society will employ at least one animal control officer at all times who, pursuant to SDCL Chapter 40-2, is both appointed by Society's Board of Directors to act as an animal control officer and authorized in writing by a circuit court judge from the Seventh Judicial Circuit in South Dakota to serve as an animal control officer. Animal control officers must be trained in the following:

- i. Humane techniques for the handling of animals;
  - ii. Standards of humane care relating to animals;
  - iii. Applicable search and seizure protocol related to animal control cases; and
  - iv. Proper protocol for the enforcement of City animal control ordinances (Rapid City Municipal Code: Title 6 in its entirety; any section dealing with animals in Chapters 9.12, 12.24, 13.16, and 13.32; and any section dealing with animals in Title 17) and state statutes found in South Dakota Codified Law Title 40 relating to animals.
- e. Maintain regular, posted office hours of not less than forty (40) hours at the Shelter for the purpose of: transacting business in connection with the obligations of the Society under this Agreement, receiving animals, and accepting applications for redemption of impounded animals. Said scheduled hours shall be provided to the Rapid City Police Department, publicly posted at the Society's Shelter, and posted on the Society's webpage.
- f. Provide emergency services outside of the regular, posted office hours. The following shall constitute an emergency:
  - i. A vicious domestic animal, dangerous domestic animal, or domesticated animal that poses a threat to human life.
  - ii. A wild animal that is kept within the City, unless that wild animal is legally kept within the City pursuant to Rapid City Municipal Code 6.08.080.
  - iii. An animal whose owner law enforcement officials or other government officials have detained and whose welfare depends on being placed into protective custody by animal control.
  - iv. An animal whose life is endangered unless immediate care/assistance is provided.
  - v. Any time confirmation is made by medical authority or a law enforcement officer that an animal has bitten a human.
- g. Maintain and provide space for law enforcement to deliver animals taken into custody by law enforcement. Society shall provide ongoing and continuous access by law enforcement to such space.

- h. Be responsible for the cost, not to exceed \$300.00, of any necessary emergency treatment for animals picked up by law enforcement officials when Society personnel are not available. Law enforcement officials picking up injured animals during times that the Society personnel are not available shall take the animal to a designated facility capable of providing an appropriate level of care, and will notify Society as soon as possible.
- i. Dispose of all dead dogs, cats and other domestic animals similar in size located within City limits upon request.
- j. Collect fees for animal licenses, animal business licenses, impounding at the Shelter (including, but not limited to, microchip implantation, vaccination, care and treatment, boarding, licensing, and animal services), humane traps, euthanization fees, and any other fees required or allowed by the Rapid City Municipal Code or any resolution of the Rapid City Common Council. Society shall be permitted to retain all monies collected.
- k. Maintain complete books and records of all funds collected pursuant to the Rapid City Municipal Code or any resolution of the Rapid City Common Council.
- l. Maintain complete records of all animals taken into custody and impounded, showing the date, place, and manner whereby the animals are brought into custody with a description of the animal and a record of its final disposition.
- m. Keep accurate and detailed records of all bite cases provided to the Society and the Society's investigation of the same.
- n. Allow the City, upon reasonable request, to inspect any and all books and records of Society to determine accuracy and compliance with this Agreement and applicable law.
- o. Submit quarterly reports to the City Finance Director listing the following information in regard to the previous quarter:
  - i. Total number of animals impounded at the Shelter, including, when available, the location where the animal came from and identification of the source of the animal;
  - ii. Purpose for which each animal was brought to the Shelter;
  - iii. Total number of rabies tests performed;

- iv. Final disposition of animals;
  - v. Number of animals licensed and total fees collected;
  - vi. Total monies collected through reclaim fees by owners; and
  - vii. Any other information requested by City with reasonable advance notice to Society.
- p. Agree to lease the Shelter real property, including but not limited to all facilities located at 1820 E. Saint Patrick Street, to the City for \$1.00 a year if the Society ceases operation of the Shelter.
  - q. Provide sufficient kennels, vehicles, and telephone service as may be needed, and any other facilities and equipment that may be required to humanely house dogs, cats, and other animals that may be impounded in compliance with all applicable laws of the United States and the State of South Dakota, City ordinances and contemporary standards of the humane treatment of animals.
  - r. Provide uniforms for Society's animal control employees that clearly identify the employees as Animal Control Officers.
  - s. Furnish, as available, humane traps to all residents who desire them, with the understanding that availability is restricted on weekends, holidays and during periods of inclement weather. During periods of high demand, the following shall be the priority:
    - i. Stray animals within City limits that have bitten a human;
    - ii. Skunks, raccoons, or other wildlife of similar size within City limits that pose a health hazard to human life;
    - iii. All other calls within City limits on a first-come first-served basis for a period of no more than seven (7) days per trap per person, unless otherwise determined by the Animal Control Officer.
  - t. Maintain a professional work place in compliance with all applicable state and federal employment laws. Training on such shall be provided by the City Attorney's Office on an as-needed basis.
  - u. Comply with reasonable administrative directives as may, from time to time, be issued by the City Liaison officer(s) or the City Attorney's Office.

- v. Establish reporting lines for employee complaints and post such reporting lines at the Society.

4. City's Obligations.

- a. Beginning on January 1, 2022, City shall pay Society the following amount for the services rendered by Society pursuant to this Agreement on the 15th day of each month through December, 2022: Thirty-One Thousand Six Hundred Fifty-Four Dollars and Fifty Cents (\$31,654.50). The total payable for 2022 will be \$379,854.

If this Agreement is automatically renewed for a new one-year term, the City's total annual payment for the new term will be the total payable for the previous term multiplied by the COLA Multiplier. The COLA Multiplier will be equal to one hundred percent (100%) plus the following percent: the Consumer Price Index Urban Consumers (CPI-U, Midwest Urban Region) percentage for the year that is two years prior to the new term, with a minimum adjustment of zero percent (0%) and a maximum adjustment of three percent (3%). For example, if this Agreement is automatically renewed for 2023, the City's total annual payment for 2023 will be \$379,854 plus the CPI-U, Midwest Urban Region percentage for 2021 (with a minimum of 0% and a maximum of 3%).

The only expenditures contemplated by the parties to be made by the City under the terms of this Agreement are those described in this section.

- b. The City shall allow the Society to dispose of animal remains at the Rapid City Landfill at no cost to the Society.
- c. The City shall authorize competent and qualified personnel of the Society to serve as Animal Control Officers to enforce City animal control ordinances and state statutes found in South Dakota Codified Law Title 40 relating to animals. All Animal Control officers shall undergo training on the enforcement of City ordinances and any other relevant procedures approved by the City Attorney's Office. It is specifically understood that the Animal Control Officers shall not be entitled to enforce any City ordinances other than those provided for and authorized by this Agreement. This Agreement authorizes the Animal Control Officers to enforce Rapid City Municipal Code: Title 6 in its entirety; any section dealing with animals in Chapters 9.12, 12.24, 13.16, and 13.32; and any section dealing with animals in Title 17.

5. Impounded Animals. All unclaimed or unredeemed animals impounded by lawful authority which are in the possession of Society shall become the property of Society upon its compliance, as applicable, with the Rapid City Municipal Code. It is understood by the parties that all animals quarantined at the Shelter for rabies observation are required to remain at the Shelter for a period of ten (10) days. In cases where authorized by law, animals impounded pursuant to any action or law may remain in the custody of the Society pending the outcome of a judicial or administrative proceeding or order of the court. Society shall not release or otherwise dispose of any animal unless and until all applicable impoundment periods prescribed by City ordinance have been satisfied unless such animal is determined to have been abandoned or, in the case of cats, deemed feral. Society shall house any animal impounded pursuant to a City ordinance violation at the Shelter until the Society receives notice from the City Attorney's Office that the animal can be released. With the permission of the City Attorney's Office, Society may house an animal impounded pursuant to a City ordinance violation at an alternative location.
6. Fines Imposed by Court Belong to City. Society shall not be entitled to any fine amounts imposed by a court of law as a result of any violation of any provision of City ordinance. This section shall not prevent Society from seeking restitution or a judgment for actual costs incurred.
7. Rapid City Common Council Liaison. The Common Council Liaison shall be a voting member of the Society's Board of Directors.
8. City Liaisons. For matters relating to Animal Enforcement and Control, the City Liaison from the Rapid City Police Department will be designated by the Rapid City Police Department Chief of Police. For any matters relating to this Agreement, the City Liaison from the City Attorney's Office will be designated by the City Attorney.
9. Contacts. Anything required by this Agreement to be delivered to Society in writing shall be delivered to the following contact. The contact for the Humane Society of the Black Hills is: Jerry Steinley, Executive Director, 1820 East Saint Patrick Street, Rapid City, SD 57703, (605) 394-4170, operations@hsbh.org. Society has a continuing obligation to ensure that the City has accurate contact information for Society and to notify the City of any changes to the contact information herein. Unless otherwise specified in this Agreement, anything required by this Agreement to be delivered to City

in writing shall be delivered to the following contact for the City: City Attorney's Office, 300 Sixth Street, Rapid City, SD 57701, (605) 394-4140.

10. Insurance. The Society shall maintain the following minimum limits of insurance coverage:

a. Worker's Compensation coverage required by law, including Employer's liability insurance of not less than:

Bodily Injury by Accident	\$100,000.00	Each Accident
Bodily Injury by Disease	\$100,000.00	Each Employee
Bodily Injury by Disease	\$500,000.00	Policy Limit

b. Commercial General Liability Insurance with Combined Single Limit of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

c. Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) each person and Three Million Dollars (\$3,000,000.00) aggregate. Professional liability insurance shall only be required when Society employs a veterinarian on its staff.

d. Commercial automobile insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) each person and One Million Dollars (\$1,000,000.00) each occurrence.

e. Commercial umbrella insurance providing excess liability over primary coverage of employer's liability, commercial general liability, professional liability, and commercial automobile liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (1,000,000.00) aggregate.

f. Additional insurance regulations. Each insurance policy shall include the following conditions by endorsement to the policy:

i. Each policy shall require thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be



given to City by certified mail to: City Finance Director, 300 Sixth Street, Rapid City, SD 57701, or to such address as the City may designate in writing. The Society shall also notify City in a like manner within twenty-four (24) hours of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Society.

- ii. Companies issuing the insurance policy, or policies, shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Society.
- iii. The City shall be endorsed to the required policy or policies as an additional insured, exclusive of professional liability insurance.
- iv. The term “City” shall include all elected officials, boards, commissions, divisions, departments, and offices of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.
- v. The policy clause “Other Insurance” shall not apply to any insurance policy coverage currently held by the City, to any future coverage, or to the City’s self-insured retentions of whatever nature. The Society waives subrogation rights for loss or damage against the City.

11. Indemnification. Society shall indemnify, defend, and hold the City, its Common Council, officers, employees, and agents harmless from any and all damages, claims, suits, demands, or asserted obligations for injuries or damages arising out of the services described in this Agreement.

12. Non-Discrimination. The parties agree that Society shall comply with all civil rights and accessibility legislation, including Title VI of the Civil Rights Act of 1984, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act, and Society shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons in any manner prohibited by local, state, or federal laws. By signing this Agreement, Society certifies that it complies, and will continue to comply, with this nondiscrimination requirement.

13. Amendment. This Agreement may only be amended by a written document duly executed by both parties.
14. Assignment. No assignment of this Agreement is valid unless City first grants its approval in writing.
15. Waiver. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
16. Breach and Opportunity to Cure. If any party materially breaches any part of this Agreement, the non-breaching party shall provide to the breaching party written notice of such breach within ten (10) business days. Thereafter, the breaching party shall have a reasonable opportunity to cure the breach. If the breach is not cured within thirty (30) days or such longer period as may be mutually agreed upon, the non-breaching party may terminate this Agreement upon written notice to the breaching party, such written notice being effective upon dispatch.
17. Time is of the Essence. The parties agree that time is of the essence with regard to the enforcement of the City's animal control ordinances and state law provisions governing the same.
18. Construction and Venue. This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of the State of South Dakota. Any action to enforce the terms of this Agreement shall be venued in the Seventh Judicial Circuit, Pennington County, South Dakota.
19. Entire Agreement and Binding Effect. This document contains the entire agreement of the parties. No other promises or consideration form any part of the parties' agreement. All prior proposals, negotiations or discussions are merged herein or intentionally omitted. This Agreement is binding upon, and shall inure to the benefit of the parties themselves, as well as their respective representatives, successors, and permitted assigns.
20. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.



