

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

This Agreement is made and entered into this ____ day of _____, 2017, by 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, Inc., 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”).

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 Effective Date. This agreement shall be effective upon execution and shall terminate December 31, 2017, unless terminated earlier as provided herein.

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 for the shelter of animals in accordance 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.
- b. 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 their answering machine that directs callers to leave a message or dial 911 in case of an emergency.
- c. Appoint and maintain competent and qualified agents for carrying out the obligations under this Agreement.
- d. Maintain regular posted office hours of not less than forty (40) hours at the animal shelter for the purpose of transacting business in connection with the obligations of the Society under this Agreement, and for the receiving of animals or for accepting applications for redemption of impounded animals. Said scheduled hours shall be provided to the Rapid City Police Department and publicly posted at the Society's shelter.
- e. Provide emergency services outside of the regular hours. The following shall constitute an emergency:

- i. Vicious domestic animal or domesticated animal that poses a threat to human life.
 - ii. 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.
 - iii. An animal whose life is endangered unless immediate care/assistance is provided and the Rapid City Police Department is unable to handle the situation.
 - iv. Any time confirmation is made by medical authority or a law enforcement officer that an animal has bitten a human.
- f. Maintain and provide space for law enforcement to deliver non-injured animals taken into custody by law enforcement. Society shall provide ongoing and continuous access by law enforcement to such space.
- g. Be responsible for the cost, not to exceed Seventy-Five Dollars and Zero Cents (\$75.00), 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.
- h. Dispose of all dead dogs, cats and other domestic animals similar in size located within City limits upon request.
- i. Collect fees for animal licenses, rabies observation, impounding and authorized microchip implantation, humane traps, boarding, and euthanization fees, and any other fees required by law. Society shall be permitted to retain all monies collected.

City shall not be responsible for the payment of any costs for services for which a fee has already been collected by Society.

- j. Maintain complete books and records of all funds collected, and 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. All books and records of Society shall be open for inspection by the designee(s) of City upon reasonable request to determine accuracy and compliance with this Agreement and applicable law.
- k. Submit quarterly reports to the Finance Officer of the City listing the following information in regard to the previous quarter:
 - i. Total number of animals impounded at the shelter facility, including, when available, the location where animal came from and identification of the source of the animal;
 - ii. Purpose for which each animal was brought to shelter facility;
 - iii. Total number of rabies tests performed;
 - iv. Final disposition of animals;
 - v. Number of animals registered/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.

- l. Agree to lease the real property, including all facilities located thereon at 1820 E. Saint Patrick Street to the City for \$1.00 a year if the Society ceases operation of the animal shelter.
- m. 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.
- n. Provide uniforms for Society's animal control employees that clearly identify the employees as Animal Control Officers.
- o. 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.
- p. 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.

- q. 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.
- r. Establish reporting lines for employee complaints, post such reporting lines online and at the Society, and distribute at least one member of the Board of Directors' contact information for the purposes of encouraging employees to report complaints to such Board members.

4. City's Obligations:

- a. Beginning in January 1, 2017, City shall pay Society for the services rendered by Society pursuant to this Agreement Twenty-Five Thousand Seven Hundred Sixty-Five Dollars and Forty-Two Cents (\$25,765.42) on or before the first day of each month through December, 2017. On September 1, 2017, the City shall pay the Society a one-time sum of Twenty Thousand Five Hundred Seventy Eight Dollars (\$20,578.00) to account for the difference between the agreed upon monthly payment for 2017 and the amount actually paid before the signing of this Agreement. The only expenditures contemplated by the parties to be made by the City are those described in this paragraph 4.
- 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 relating to animal cruelty, neglect, and abuse. All Animal Control officers shall undergo training on City ordinances, code enforcement, 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.

5. Seized Animals. All unclaimed or unredeemed animals seized and impounded by lawful authority which are in the possession of Society shall become the property of Society upon its compliance with the three (3) day impoundment period required by Section 6.08.240 of the Rapid City Municipal Code. It is understood by the parties that all animals impounded and held for rabies observation are required to remain at the shelter for a period of ten (10) days, and in cases where authorized by law, animals impounded pursuant to any action or law may remain in the custody of the shelter pending the outcome of a judicial or administrative proceeding or order of the court. Society shall not release or otherwise dispose of any animal impounded within City limits unless and until all impoundment periods prescribed by the City ordinances have been satisfied unless such animal is determined to have been abandoned or, in the case of cats, deemed feral.

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 for actual costs incurred.

7. City Council Liaison. The City 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 will be Assistant Police Chief Don Hedrick, or his successor. For any other matters relating to this contract, the City Liaison will be Assistant City Attorney Jess Rogers, or her successor.

9. 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 Officer, 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.

10. Indemnification. Society shall indemnify, defend, and hold the City 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.

11. Amendment. This Agreement may only be amended by a written document duly executed by both parties.

12. Assignment. No assignment of this Agreement is valid unless City first grants its approval in writing.

13. 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.

14. 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.

15. 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.

16. 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 dispute arising out of this Agreement shall be litigated only in the Circuit Court, Pennington County, South Dakota.

17. 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.

18. 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.

19. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

20. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

CITY OF RAPID CITY

ATTEST:

Mayor

Finance Officer

(SEAL)

HUMANE SOCIETY OF THE BLACK HILLS, INC.

By _____
Jacque Harvey, Executive Director

STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2017, before me the undersigned officer, personally appeared Jacque Harvey, who acknowledged herself to be the Executive Director of the Humane Society of the Black Hills, Inc., a South Dakota nonprofit corporation, and that as such Executive Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Humane Society of the Black Hills, Inc., as Executive Director.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public, South Dakota
My Commission Expires: _____