

ANIMAL SERVICES CONTRACT

THIS Animal Services Contract ("Contract") is made by and between the City of Yuma, an Arizona municipal corporation, ("City"), and the Humane Society of Yuma, Inc. an Arizona nonprofit corporation, ("HSOY") on this ____ day _____, 2021 ("Effective Date"). The City and HSOY are sometimes referred to individually as the "Party" and collectively as the "Parties".

WHEREAS, the City Council of the City of Yuma has enacted certain laws relating to and regulating animal control, all contained in the Yuma City Code, Title 13, Chapter 130; and

WHEREAS, the CITY needs a facility to shelter animals captured or otherwise coming into the possession of a City enforcement agent pursuant to the City Code; and

WHEREAS, HSOY operates a facility suitable to shelter and provide for the welfare and disposition of animals and other related activities, and has certain equipment and trained personnel familiar with the matters involved with animal shelter services, etc.; and

WHEREAS, the CITY needs an animal licensing agent with means to provide licensing options for the general public, public events and shot clinics; and

WHEREAS, HSOY has the software, equipment, personnel and means to provide the required licensing services and provide access to software for enforcement and license activities; and

WHEREAS, it is in the interest of the public and the general health and welfare of the Yuma community to enter into this Contract with HSOY to provide animal shelter and licensing services;

NOW, THEREFORE, the Parties hereto, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

ARTICLE I: KENNELING SERVICES

HSOY SHALL:

- A. On a 24-hours per day, 365-days per year basis, provide animal shelter services ("Services") to the City. Services include, but are not limited to, impounding, sheltering, and boarding animals, care of injured or sick animals, euthanasia, and disposal of animals which perish due to injury or illness under the care of HSOY;
- B. Ensure that at least five (5) kennels are available at all times for the City of Yuma Police Department Animal Control Unit ("Animal Control") to drop off captured dogs;
- C. Provide emergency, on-call staff to attend to injured or sick animals at all times that HSOY is not open to the public. HSOY shall be available at the HSOY facility within one (1) hour of a call from a representative of Animal Control. HSOY shall designate a contact person

and provide the City with an after-hours telephone number. Sick or injured animals whose owner may be readily identified and located shall not be brought by Animal Control to HSOY for after-hours care except under extraordinary circumstances;

- D. Furnish all necessary equipment, supplies, tools, and personnel to provide all the Services required by this Contract;
- E. Provide a sufficient number of trained animal technician staff to provide all the Services required under this Contract; and
- F. Accept all animals captured, whether by a citizen or Animal Control within the City limits and brought to the shelter.

ARTICLE II: ANIMAL BITES & SICK ANIMALS

A. HSOY SHALL:

1. Kennel all animals that are brought to HSOY for quarantine as a result of a bite (hereafter referred to as "Quarantine Animal"). The Quarantine Animal shall be quarantined in accordance with the laws and regulations of the City and the State of Arizona and the most recent version of the Arizona Manual for Rabies Control and Bite Management, published by the Arizona Department of Health Services. If there is a conflict between the laws and regulations of the State of Arizona and the most recent version of the Arizona Manual for Rabies Control and Bite Management, published by the Arizona Department of Health Services, the laws and regulations of the City and the State of Arizona shall control;
2. Immediately contact a supervisor at Animal Control in the event that a Quarantine Animal becomes sick or HSOY suspects the Quarantine Animal may be showing clinical signs of rabies;
3. Make daily notes on the medical sheet that is attached to the cage card of each Quarantine Animal; and
4. Notify the City at the end of a Quarantine Animal's quarantine period. Upon notification, HSOY shall provide Animal Control access to the notes on the Quarantine Animal's medical sheet and allow Animal Control to observe the behavior of the Quarantine Animal.

B. CITY SHALL:

1. Ensure that every animal delivered by Animal Control to HSOY for quarantine is placed in an available quarantine kennel and the kennel is appropriately marked as a Quarantine Animal;
2. Coordinate with the State of Arizona to determine the disposition of any Quarantine Animal that displays clinical symptoms of rabies;
3. Be responsible for all communication with the owners of Quarantine Animals.

4. Determine, and notify HSOY staff, if a Quarantine Animal can be released from the quarantine and returned to an owner by signing the Quarantine Animal's cage card;
5. Not hold HSOY responsible in the event a Quarantine Animal is released from quarantine by Animal Control based on Animal Control's observation of the Quarantine Animal and the Quarantine Animal bites a person again; and
6. In accordance with Arizona Revised Statutes ("A.R.S.") § 11-1014, determine if a dog, properly vaccinated pursuant to A.R.S. Title 11, Chapter 7, Article 6, that bites any person may be confined and quarantined at the home of the dog's owner or wherever the dog is harbored and maintained, with the consent of and in a manner prescribed by Animal Control.

ARTICLE III: LICENSING SERVICES

A. HSOY SHALL:

1. Coordinate and perform all licensing services to the reasonable satisfaction of the City as determined by the City Administrator or his designee;
2. Manage the daily operations of licensing dogs and cats for the City, including but not limited to, processing licensing related mail and reports from pet owners; processing license tag sales and vaccination reports; entering accurate licensing, vaccination, animal and owner data into the computer database; and providing customer service as set forth in paragraph 19 of this subsection A;
3. Supply and issue pet licenses and tags to City residents who provide valid vaccination certificates and payment for the pet license and tags;
4. Supply and issue pet licenses and tags to City residents within ten (10) business days of receipt to City residents who apply and pay for a pet license and tag on HSOY's website or by mail;
5. Notify applicants of incomplete applications or insufficient payment, specifying the application's deficiencies, within ten (10) business days of receipt of the person's application;
6. Collect any and all licensing and late fees. Late fees shall be collected pursuant to Arizona Revised Statutes §11-1008(A). License fees shall be collected in accordance with the following licensing fee schedule:

Unaltered Dog or Cat		
1 Year - \$30.00	2 Year - \$55.00	3 Year - \$75.00
Altered Dog or Cat		
1 Year - \$15.00	2 Year - \$26.00	3 Year - \$37.00

7. For each license issued by HSOY, provide all completed forms and vaccine certificates to the City no less than weekly;
8. At no charge to the City resident, supply and issue pet licenses and tags to service animals as defined in the Americans with Disabilities Act ("ADA");
9. Provide means for persons to apply for and receive a pet license via mail, the

- internet, on-site and at locations within specific City facilities;
10. Provide Animal Control's Administrative Assistant and the City's Licensing Agent access to HSOY software to enter and/or correct pet license data;
 11. Provide Animal Control access to public events and shot clinics;
 12. Process rabies vaccination certificates from pet owners, veterinarians or other authorized registrars;
 13. Send written notice to any and all pet owners who have vaccinated their pet(s) against rabies, but do not have a valid pet license(s) or tag(s) informing the pet owner that he or she is not in compliance with City pet licensing requirements;
 14. Mail renewal and reminder notices to pet owners at least thirty (30) days before the owner's pet license(s) expires;
 15. Provide City staff access to HSOY's pet licensing data, including but not limited to, allowing City staff to run detailed reports on the number of pet licenses sold by species, sterilization status and veterinarian;
 16. Provide initial licensing database training to authorized City personnel;
 17. Provide Animal Control the ability to view pet licensing data online via HSOY's website at no additional charge;
 18. Comply with all State of Arizona and local laws, regulations and ordinances governing pet licenses; and
 19. Provide customer service for City residents by:
 - i. Handling all customers in a professional and timely manner;
 - ii. Retrieving data to assist in reuniting lost pets with their owners, and answering questions about the licensing process;
 - iii. Communicating with citizens via phone, mail or e-mail as needed to ensure City pet licenses are only issued to City residents. If a City pet license is issued to a non-City resident, HSOY shall correct the problem at no cost to the City; and
 - iv. Answering telephone inquiries Tuesday through Saturday from 10:00 a.m. to 4:30 p.m.

ARTICLE IV: REPORTING

- A. *License Report.* HSOY shall submit to the City a report detailing the licensing for all animals licensed to City residents within fifteen (15) business days after the end of each calendar month during the term of this Contract. The licensing report shall include the following:
 1. The total number of licenses issued, itemized by dogs and cats;
 2. A list of each license number issued and the date each license was issued;
 3. The entity that issued the license and the method the license was issued (e.g. by mail, in person, etc.);
 4. Reproductive status of each animal licensed; and
 5. Duration of each license issued;

The City shall review the licensing report and identify any inaccurate or incomplete data within ten (10) business days after the receipt of the licensing report. HSOY shall correct the licensing report and resubmit it to the City. Once changes to the licensing report are made and mutually agreed upon, HSOY will submit an invoice to the City for payment as set forth in Article V of this Contract.

B. *Animal Control Report.* HSOY shall submit to the City a report for all animals received from Animal Control or a City resident within fifteen (15) business days after the end of each calendar month during the term of this Contract. The report must include the following information:

1. The number of animals, itemized by dogs, cats, and other animals, received from Animal Control;
2. The number of at-large animals found within the City limits and delivered to HSOY;
3. The number of feral cats received.
4. The number of quarantined bite animals;
5. The number of animals, itemized by dogs, cats, and other animals, received from Animal Control that are adopted, released to an animal rescue organization, or returned to the owner during the invoice period;
6. The number of animals, itemized by dogs, cats, and other animals, received from Animal Control or a City resident with authorization from Animal Control, that are euthanized;
7. The total impound and boarding fees collected, itemized per animal, from City residents reclaiming animals; and
8. The number of days each animal was boarded, itemizing quarantine cases, animal cruelty cases and returned or adopted animals.

C. Failure to provide all of the reports required by this Article IV may be considered a breach of this Contract.

ARTICLE V: PAYMENT

A. *Services Fee.* The City agrees to pay HSOY an annual services fee ("Services Fee"), payable in monthly installments described in the table below. The City shall pay each monthly installment within fifteen (15) days after receipt of the Animal Control report, which is set forth in Article IV of this Contract. This Services Fee does not include fees for licensing or advertising, which are set forth below. Animals shall be held in accordance with Chapter 130 of the Yuma City Code, as may be amended.

Annual Services Fees; Monthly Installments; July 1, 2021 - June 30, 2022		
Year 1	\$270,000	\$22,500.00 per month

B. *Licensing Fees.* The City agrees to pay HSOY Six dollars (\$6.00) per animal license issued by HSOY. The City agrees to pay HSOY Two dollars (\$2.00) per license processed and

issued by City Staff.

- C. Within five (5) days after the City approves the licensing report (set forth in Article IV), HSOY shall remit to the City any and all late fees and license fees received from City residents in excess of the amounts stated in this Article V, section B. The City will withhold payment until the licensing report discussed in Article IV of this Contract is submitted and approved by the City, not to be unreasonably withheld.

ARTICLE VI: TERM OF CONTRACT

- A. This Contract is for an initial term commencing on the Effective Date identified herein and ending on June 30, 2022. All terms of this Contract are subject to termination as provided for in Article VIII of this Contract.
- B. In the event the Parties do not renew this Contract, or the City and HSOY are unable to agree upon any requested changes, the City shall have the option to extend this Contract at the current rate for a period not to exceed six (6) months for the purpose of completion of services started prior to the Contract's expiration.
- C. Nothing in this Contract shall preclude the City from contracting with HSOY for services to be provided in addition to the Services set forth in this Contract.

ARTICLE VII: AUTHORIZED CONTRACT AMOUNT

- A. HSOY shall not charge a City resident a daily animal boarding fee of more than twelve dollars (\$12.00) per animal per day.
- B. In addition to the daily animal boarding fee, HSOY may charge an impound fee for each animal of a City resident. The impound fee for each animal of a City resident shall not exceed thirty dollars (\$30.00) on the animal's first impound, fifty-five dollars (\$55.00) on the animal's second impound, or one-hundred five dollars (\$105.00) on the animal's third and any subsequent impound.
- C. Impound and boarding fees collected from owners for boarding animals delivered to HSOY by Animal Control, including animals held in quarantine or pending disposition of an animal cruelty case, may be retained by HSOY.

ARTICLE VIII: TERMINATION

- A. This Contract may be terminated by the following:
 - 1. By mutual written consent of both Parties;
 - 2. For breach or default by either Party of any of its obligations set forth in this Contract.

The non-defaulting Party shall notify the defaulting Party of the specific grounds for termination and provide a reasonable time for remedial action. In no event shall such time to remedy exceed thirty (30) days; or

3. The City no longer needs HSOY to provide the Services set forth in this Contract.
- B. If a Party intends to terminate this Contract under the terms set forth in subsections (A)(1) and (3) of this Article VIII, the terminating Party shall send notice of intent to terminate in writing to the other Party not less than six (6) months prior to the effective date of the termination.
- C. HSOY shall continue to provide Services through the date of termination of this Contract.
- D. Data and information collected by HSOY in the performance of this Contract are and shall remain the property of the City. HSOY shall, however, be able to use the statistical data and information collected from the performance of this Contract in its standard course of operation as it deems necessary. HSOY shall not make public, disseminate or share personal data collected by HSOY in performance of this contract. At the termination of this Contract, HSOY shall cease any and all uses of personal data collected by HSOY in the performance of this Contract and return to the City any and all data, information and materials supplied by the City in a format acceptable to City within thirty (30) days of the effective date of the termination.

ARTICLE IX: INDEMNIFICATION

- A. To the fullest extent permitted by law, HSOY shall indemnify, defend, and hold harmless the City, its agents, employees, officers, volunteers, and officials ("Indemnified Party") for, from and against all claims, liabilities, demands, damages, losses, and expenses, including attorneys' fees and litigation expenses, to which any such Indemnified Party may become subject, under any theory of liability whatsoever, (collectively "Claims") to the extent that such Claims result from and/or arise out of the HSOY's intentional, reckless, or negligent acts, mistakes, errors, or omissions in performance of this Contract. This includes any intentional, reckless, or negligent acts, mistakes, errors, or omissions of the HSOY employees, agents, officers, and sub-contractors employed directly or indirectly by the HSOY.
- B. The amount and types of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE X: INSURANCE REQUIREMENTS

Before the commencement of any services, the HSOY shall provide the City with certificates of insurance and formal endorsements identifying this Contract by number or name. All required insurance policies, except Workers' Compensation and Professional Liability, must

include an endorsement naming the City, and its employees, as Additional Insured. All policies shall also contain an endorsed waiver of subrogation against the City, its officials, officers, employees, and agents for losses arising from work performed by or on behalf of HSOY. Policies must include endorsements providing that such insurance as is afforded under HSOY's policy is primary insurance with respect to the additional insured and any insurance maintained by the City is excess and noncontributory with the insurance required this Contract. All insurance policies are subject to approval by the City. HSOY shall give the City thirty (30) days written notice before canceling, terminating or altering any policy. HSOY's failure to furnish evidence of insurance as set forth in this Contract may be considered a breach.

The Certificate Holder must be named as follows: City of Yuma, Yuma, Arizona

All certificates are to be sent to:

City of Yuma, Purchasing Division
One City Plaza,
Yuma, AZ 85364-1436 or purchasingweb@yumaaz.gov

- A. HSOY shall carry **Worker's Compensation** Insurance to cover obligations imposed by federal and state statutes having jurisdiction of employees engaged in the performance of the work or services, and **Employer's Liability** Insurance of not less than **\$100,000.00** for each accident, **\$100,000.00** disease for each employee, and **\$500,000.00** disease policy limit. HSOY shall require sub-contractors to provide Worker's Compensation and Employer's Liability with at least as much coverage as required of HSOY. HSOY must waive subrogation against the CITY and require its insurer to waive subrogation against the CITY.
- B. HSOY shall carry **Commercial/Business Automobile Liability** insurance with a combined single limit for bodily injury and property damages of not less than **\$1 million for each occurrence** on all vehicles HSOY uses, whether owned or leased, in the performance of the work or services under this Contract.
- C. HSOY shall carry **Commercial General Liability** insurance with an unimpaired limit of not less than **\$1 million for each occurrence** with a **\$2 million General Aggregate** Limit. The policy must be primary. Coverage must be on a per occurrence, per location basis. HSOY must provide annual Certificates of Insurance of continued coverage and endorsements. No endorsement limiting or excluding a required coverage is permitted. The insurance policy must not exclude:
 - 1. bodily injury
 - 2. property damage
- D. HSOY shall carry **Professional Liability** coverage for errors and omissions arising out of the work or services performed by HSOY, its agents and employees, with an unimpaired

limit of **\$500,000.00** each claim and **\$1 million all claims**.

- E. HSOY shall carry **Umbrella/Excess Liability** insurance with an unimpaired limit of not less than **\$2 million per occurrence** combined limit bodily injury and property damage, and applies in excess of the Commercial General Liability, Automobile Liability and Employer's Liability, as required in this Contract.
- F. HSOY shall require its sub-contractors to provide the above insurance with at least as much coverage as required of HSOY. All policies must include the City as an Additional Insured and any insurance carried by the City or its officers and employees must be excess and non-contributory to that of the subcontractor.

ARTICLE XI: GENERAL CONDITIONS

- A. *Nondiscrimination.* HSOY shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order 2009-09 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. HSOY shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans With Disabilities Act. In addition, HSOY shall include similar requirements of subcontractors in any contracts entered into for performance of HSOY'S obligations under this Contract.
- B. *Compliance with Law.* HSOY shall comply with all federal, state, and local laws and ordinances, including Title 13, Chapter 130, as amended, of the Yuma City Code, applicable to its performance under this Contract. In addition, HSOY shall include similar requirements of subcontractors in any contracts entered into for performance of HSOY'S obligations under this Contract.
- C. *Assignment.* This Contract is not assignable unless both Parties mutually consent otherwise in writing. The covenants and conditions herein contained apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto.
- D. *Jurisdiction / Attorneys' Fees.* Any action to enforce any provision of this Contract or to obtain any remedy with respect hereto shall be brought exclusively in the Superior Court, Yuma County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the exclusive jurisdiction and venue of such Court. The Parties also expressly waive their right to remove any such action to federal court. If an action or proceeding is brought for failure to observe any of the provisions of this Contract, the prevailing Party is entitled to recover, as part of such action or proceeding, all litigation and collection expenses, including but not limited to expert witness fees, court costs, reasonable attorney fees and, without limitation, all copying, duplication, scanning, imaging, and/or related expenses related to document management, reproduction, and/or recovery, witness fees,

court costs, and reasonable attorney fees.

- E. *Laws Governing.* Contract shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance.
- F. *Non-Waiver.* The failure of either Party to insist upon strict performance of any of the provisions of this Contract, or to exercise any of the rights or remedies provided by this Contract, or any delay in the exercise of any rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Contract, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Contract.
- G. *Severability.* If any part, term or provision of this Contract is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.
- H. *Integration.* This Contract (including the exhibits, any written schedules, supplements or amendments thereto) contains the entire Contract between the Parties. No oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Contract, or specifically referred to in this written Contract shall be valid or binding. This Contract may not be enlarged, modified, or altered unless mutually agreed upon in writing and signed by both Parties.
- I. *No Partnership.* Nothing in the Contract is intended or shall be construed to constitute a partnership or joint venture between the Parties and neither Party shall be deemed the principal, agent, officer, or member of the other.
- J. *Time of the Essence.* Time is of the essence in this Contract. Unless otherwise specifically provided in this Contract any consent to delay in the performance of HSOY of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
- K. *Conflict of Interest.* This Contract shall be subject to the Conflict of Interest provisions of A.R.S. § 38- 511, as amended.
- L. *Environmental Conditions.* HSOY shall take all steps necessary to ensure HSOY'S compliance with all applicable federal, state, and local environmental laws, regulations and ordinances, and shall indemnify and hold the CITY harmless for any remediation required and from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations and ordinances.

- M. *Force Majeure*. HSOY will not be liable for failure to perform HSOY's duties if such failure is caused by catastrophe, act of war, civil disturbance, act of God or similar contingency beyond the reasonable control of HSOY. HSOY shall take all such measures as may be necessary to resume service as quickly as possible.
- N. *Compliance with Federal and State Laws*. HSOY understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

Under the provisions of A.R.S. § 41-4401, HSOY hereby warrants to the City that the HSOY and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject HSOY to penalties up to and including termination of this Contract at the sole discretion of the City.

The City retains the legal right to inspect the papers of any HSOY or Subcontractor's employee who works on this Agreement to ensure that HSOY or Subcontractor is complying with the Contractor Immigration Warranty. HSOY agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of HSOY and any of subcontractors to ensure compliance with Contractor's Immigration Warranty. HSOY agrees to assist the City in regard to any random verification performed.

Neither HSOY nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if HSOY or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 2748 of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214(A).

The provisions of this Section N must be included in any contract the HSOY enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract.

- O. *Notices*. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and received if:
1. personally delivered to the undersigned representatives listed below at the addresses set forth below;
 2. deposited in the U.S. Mail, postage prepaid, certified, return receipt requested, to

- the addresses set forth below; or
3. prepaid and given to a recognized and reputable overnight delivery service, such as UPS or FedEx, to be delivered to the addresses set forth below.

If a copy of a notice is also given to a Party's counsel or other authorized recipient, the notice is deemed to have been received on the date on which the undersigned representative received the notice, not the date its counsel or other authorized recipient received the notice.

To City:
City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364-1436

To HSOY:
Humane Society of Yuma, Inc.
Attn: Executive Director
4050 S. Avenue 4 1/2E
Yuma, Arizona 85365

P. *Prior Contract Superseded.* This Contract supersedes and replaces the contract between the City of Yuma and the Humane Society of Yuma executed on October 19, 2015. By signing below, the Parties agree to terminate the October 19, 2015 contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the Effective Date.

CITY OF YUMA

Humane Society of Yuma, Inc.

By: _____
Philip A. Rodriguez
Title: City Administrator

By: _____
Annette Lagunas
Title: Executive Director

ATTEST:

Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

Richard W. Files, City Attorney