

**SANTA FE COUNTY
PROFESSIONAL SERVICES AGREEMENT
WITH SANTA FE ANIMAL SHELTER & HUMANE SOCIETY
TO PROVIDE ANIMAL CONTROL SERVICES**

THIS AGREEMENT is made and entered into this 13th day of November, 2012 by and between Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as the "County") and the Santa Fe Animal Shelter & Humane Society, a New Mexico non-profit organization, with a principal address of, 100 Caja Del Rio Road, Santa Fe, NM 87507, hereinafter referred to as the "Contractor."

WHEREAS, pursuant to NMSA 1978, Section 13-1-126, the County has determined Contractor to be a "sole source" provider of the requested services;

WHEREAS, the County is in need of animal control and humane animal care services and the Contractor maintains and operates the Santa Fe Animal Shelter & Humane Society;

WHEREAS, the County desires to engage the Contractor to render animal control and humane animal care services;

WHEREAS, the County requires these services and the Contractor is willing to provide the services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES

The Contractor shall:

- A. Provide an animal housing facility for animals impounded by County Animal Control Officers ("ACOs"). The Contractor shall operate and be accessible to ACO's twenty-four (24) hours per day throughout the term of this Agreement.
- B. Accept an average of one hundred (100) County-impounded animals per month provided these animals do not exhibit any symptoms of disease or conditions such as rabies or other dangerous diseases. If the number of stray dogs and cats received from the ACOs exceed one hundred and twenty (120) in any given month, the Contractor will submit a separate invoice to the County at the Contractor's daily impound rate as provided in Section 2 (Compensation).
- C. Visually examine all animals upon intake, provide identification bands and wellness vaccinations to healthy non-fractious animals and provide stabilization and wellness care as needed.
- D. Hold animals impounded by the ACOs as strays for the length of time required by Santa Fe County Ordinance No. 1991-6.
- E. Provide daily care to animals according to accepted sheltering industry standards.
- F. Provide medical care under the direction and authority of the Contractor's licensed

veterinarian. Decisions regarding all medical care, including treatment of animals rest with the Contractor's licensed veterinarian. Animals will not be euthanized within the animal holding period unless medically necessary. Decisions regarding medically necessary euthanasia of suffering animals impounded at the Santa Fe Animal Shelter rest with the Contractor's licensed veterinarian, in accordance with County Ordinance 1991-6, Article 3, Section 3-4(A). The Contractor shall notify the County prior to conducting medically necessary euthanasia of any animal received from an AOC.

- G. Contract with licensed veterinarians whose licensure is in good standing with the New Mexico Board of Veterinary Medicine. The Contractor shall ensure that the veterinarian provide and be responsible for emergency veterinarian services, during veterinarian's regular business hours, for animals received from an AOC. The veterinarian shall be on duty approximately forty (40) hours per week. Contractor shall notify the County of any changes to the veterinarian's work schedule.
- H. Provide monthly status reports to the County that contain the following information: (i) the total number of animals brought to the Contractor each month by the ACOs; (ii) the total number of animals claimed by their owners; and (iii) the total number of animals adopted out by the Santa Fe Contractor.
- I. Receive and maintain County intake cards assuring the cards include the ACO's description of the animal, the date of intake, any special care notations and the disposition of that animal. The Contractor shall return to the ACO Supervisor the County intake card upon disposition of all animals received from the AOCs.
- J. At the County's discretion, the Contractor shall collect fees from the owners for animals running at large, or other applicable fees for impounded animals on behalf of the County. Any fees collected by the Contractor, on behalf of the County, shall be specifically authorized by the County and recorded by the Contractor. The Contractor shall remit records of collected fees on a monthly basis to the County.
- K. Be responsible for the storage and disposal of remains of animals received from an AOC which are euthanized by the Contractor. The Contractor shall provide and maintain a freezer on the Contractor's premises for the appropriate storage of the remains of euthanized animals.
- L. Contractor's staff and volunteers shall conduct themselves professionally and courteously at all times.
- M. Be responsible for making the final decision on the fate of animals received from an AOC which are not designated by an AOC as "Do Not Release to Owner" or "Do Not Euthanize."
- N. Collect Licensing and Impoundment Fees consistent with Appendix A.I (A) and (B) of County Ordinance 1991—6. Contractor will incur all costs involved in launching a licensing program and will collect and retain all Licensing and Impoundment fees up to a total of \$100,000. After Contractor nets \$100,000 in Licensing and Impoundment fees, the Licensing and Impoundment Fees collected thereafter will be split evenly between the County and Contractor. All expenses incurred by the Contractor for the licensing program shall be reasonable and used solely for the animal licensing program. All records and expenses for the animal licensing program established by the Contractor are public records and subject to

- O. Animals delivered to the Contractor by an ACO and whose impoundments are indicated as "Protective Custody" shall be held by the Contractor for up to five (5) days. If the animal has not been reclaimed by its owner by the third day, the Contractor will thereafter charge a \$20.00 per day boarding fee which will be assessed to the owner if the owner reclaims the animal by day five. If the owner fails to reclaim the animal by the end of day five, the animal will be deemed abandoned and its disposition handled by the Contractor.
- P. Sterilize healthy feral cats received from an ACO and return the feral cats to the location where they were found or to a managed cat colony.

The County shall:

- A. Upon impoundment of an animal and delivery to the Contractor complete a County impound card to include the time of impound and the location at which the animal was impounded.
- B. Upon delivery of an impounded animal to the Contractor, indicate in writing whether the County requires the impounded animal to be held beyond the time limits stated in County Ordinance 1991-6, Art. 3, Section 3-2. These impounded animals will be designated as: "Do Not Release to Owner" or "Do Not Euthanize."
- C. Contact the owner of animals impounded by the ACOs. Whenever possible, the County shall attempt to return animals to their owner prior to impounding them at the Contractor's facility.
- D. Provide and be responsible for emergency veterinary services for animals impounded by an ACO when the Contractor's veterinarian is not on duty.
- E. If the County makes the decision to select alternate care and treatment of an animal impounded at the Contractor's facility, notify the Contractor within twenty-four (24) hours of intake and assume all responsibility and liability for that animal, including cost of care for that animal.
- F. In regards to animal bite cases, upon delivery of an animal by an ACO complete and sign the Bite Case Quarantine form attached hereto as Exhibit A and the County impound card. If owner of the animal is known and present at the time of impound, the Bite Case Quarantine form will also be completed and signed by the owner. If the owner of the animal is known and not present at the time of impound, the County will complete the Bite Case Quarantine form without the owner's signature.
- G. Deliver to the Contractor the remains of deceased animals for disposal by the Contractor.
- H. Provide the Contractor with instructions regarding any fees that may be collected by the Contractor on behalf of the County.
- I. Be available to the Contractor Monday through Friday during business hours, for any matters regarding action to be taken by the Shelter including final disposition of any animal delivered by an ACO and impounded at the Contractor's facility.
- J. Make all reasonable attempts before day five provided for in Section 1.O. above, to notify an owner of an animal that has been impounded and delivered to the Santa Fe Animal Shelter and designated as being in "Protective Custody."

- Fe Animal Shelter and designated as being in "Protective Custody."
- K. Restrict the Contractor's application of the licensing program provided for in Section 1.N. above to those animals required to be vaccinated and/or licensed in accordance with Section 77-1-3 NMSA 1978 (Vaccination of dogs and cats) and 77-1-15.1 (Regulation and licensure of dogs; impoundment of animals; qualified service animals exempt).
 - L. In cases where an AOC impounds an animal that is not required to be licensed and/or vaccinated under Sections 77-1-3 and 77-1-15.1 NMSA 1978, such as in hoarding cases or cases involving domestic livestock or exotic animals, the County and Contractor may reach agreement on the Contractor's boarding of such animals for a period of time that exceeds the Contractor's standard stray waiting or boarding period. The County will incur the cost and expense of such extended boarding by the Contractor and the County shall seek remuneration from any defendants or violators involved in the case as may be permitted under state law.

2. COMPENSATION AND INVOICING

- A. As compensation for the services provided for the average numbers stated in Section 1.B, the County shall pay Contractor at the conclusion of each month as follows:
 - a) For FY 2013 beginning October 1, 2012: \$15,066.67 per month for 9 months;
 - b) For FY 2014 beginning July 1, 2013: \$15,572.82 per month for 12 months;
 - c) For FY 2015 beginning July 1, 2014: \$15,572.82 per month for 12 months.

The total compensation to be paid under this Agreement for the boarding and disposition of 120 County-impounded dog and cats per month for the term of this Agreement, shall not exceed **Four Hundred Ninety Five Thousand, Two Hundred Twenty Two Dollars and Seventy Cents (\$495,222.70)** inclusive of any applicable tax.

- B. In addition, the Contractor shall invoice the County at a rate of \$20.00 per day per dog or cat for the care and boarding of County-impounded dogs or cats that exceed 120 per month.
- C. The Contractor shall submit a written request for payment to the County whenever payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which

The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- D. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- E. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate on June 30, 2015, unless earlier terminated pursuant to Sections 5 (Termination) or 6 (Appropriations) of this Agreement. After the initial term of three (3) years, the County has the option to renew this Agreement for one (1) additional year. The County will exercise this option by submitting a written notice to the Contractor in no less than sixty (60) days prior to the expiration of the initial term of this Agreement. The compensation for services as provided in this Agreement are fixed for the first three (3) years of this Agreement and may only be modified or amended by an instrument in writing signed by the parties. In no event shall the term of this Agreement exceed four (4) years from the effective date of the Agreement without this Agreement being amended in writing.

4. ADDITIONAL SERVICES

- A. The parties agree that all services set forth in Section 1 (Scope of Services) of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with industry standards and County Ordinance 1991-6, for the amounts set forth in Section 2 of this Agreement, and for no other cost, amount, fee or expense.
- B. The County may from time to time request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than sixty (60) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable services, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work or services performed on or after the effective date of termination.
- C. Termination for Convenience by Contractor. The Contractor may terminate this Agreement at any time by giving the County written notice of termination. The notice shall specify the effective date of termination which shall not be less than sixty (60) days from the County's receipt of the notice and shall be of sufficient advance notice so as to give the County sufficient and reasonable time to secure the services of another contractor, or otherwise make arrangement for continued animal boarding services for animals impounded by the County. In no event shall Contractor's stated effective date of termination for convenience be less than sixty (60) days from the date of the County's receipt of Contractor's written notice.
- D. In the event the County or Contractor terminates pursuant to this Section 5 with an effective date of termination that is a date between the first and last of a month, the compensation to be paid to the Contractor shall be the monthly compensation prorated daily to the day before the stated effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If

sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use the County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships

with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the County.

13. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

14. INDEMNIFICATION

- A. The Contractor shall defend, indemnify, and hold harmless the County and its Elected Officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, counsel shall be retained to represent the County's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

15. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).
- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

16. PERMITS, FEES, AND LICENSES

The Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

17. EQUAL OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligation hereunder, the Contractor shall comply with all applicable laws, ordinances, and obligations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. The Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the federal and state district courts of New Mexico, located in Santa Fe County.

20. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

21. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

22. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

23. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2 (Compensation) of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

24. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County or its “public employees” at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

25. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

- C. Workers’ Compensation Insurance. The Contractor shall comply with the provisions of the Workers’ Compensation Act.

- D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein

26. CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. It is a corporation duly organized and in good standing under the laws of the State of New Mexico.

- B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

- C. This Agreement and the Contractor’s obligations hereunder do not conflict with the Contractor’s articles of incorporation or by-laws or any corporate resolution

adopted by the Contractor.

27. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

28. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County:

Santa Fe County
Santa Fe County Attorney
102 Grant Avenue
Santa Fe, NM 87504-0276

and,

Santa Fe County Sheriff
#35 Camino Justicia
Santa Fe, NM 87508

Contractor:

Santa Fe Animal Shelter & Humane Society
Attention: Finance Department and Executive Director
100 Caja Del Rio Road
Santa Fe, NM 87507

29. SURVIVAL

The provisions of Sections 6, 8, 10, 14, 18, 21, 23, 26 and 29 shall survive termination of this Contract.

30. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges

and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Services) of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

31. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SANTA FE COUNTY

Liz Stefaniacs
Liz Stefaniacs, Chair
Santa Fe Board of County Commissioners



ATTEST
Valerie Espinoza
Valerie Espinoza, Clerk

APPROVED AS TO FORM

Stephen C. Ross
Stephen C. Ross
Santa Fe County Attorney

Sept. 25, 2012
Date

FINANCE DEPARTMENT APPROVAL

Teresa C. Martinez
Teresa C. Martinez
Santa Fe County Finance Director

10/3/2012
Date

CONTRACTOR SANTA FE ANIMAL SHELTER & HUMANE SOCIETY

Mary Martha

Oct. 10, 2012
Date

By: 

Title: Executive Director

FEDERAL IDENTIFICATION NUMBER

85-6000484