

Amended Agreement for Care and Disposition of Impounded Animals (2020)

This Amended Agreement is entered into by and between the City of Brookings, a South Dakota municipal corporation, Brookings, South Dakota 57006 (the "City"), and the Brookings Regional Humane Society (the "Contractor").

This Agreement amends the terms of the current Agreement for Care and Disposition of Impounded Animals between the parties and is effective for the remainder of 2020. In consideration of the mutual covenants and promises of the parties hereto, the City and the Contractor covenant and agree as follows:

Section 1 Contractor Services

- A. Shelter services. The Contractor agrees to provide the following animal shelter services:
1. Act as the municipal animal shelter by furnishing and maintaining shelter facilities for the handling of cats and dogs received from the City, whether stray, impounded or otherwise, which are turned over to the Contractor by the City Animal Control Officer (also referred to herein as Community Service Officer) and/or by City Law Enforcement Officers.
 2. Provide sufficient kennel space to meet animal control needs. It is understood that feral cats will not be transferred to the shelter facility unless they show signs of domestication and safe handling at the Animal Control Shelter. Additionally, any animal that requires extended holds for legal or other reasons will be held at the Animal Control Shelter unless a mutual agreement between Animal Control and Contractor is made.
 3. Provide the Community Service Officer and/or City Law Enforcement Officer with 24-hour access to Contractor's shelter facilities.
 4. Provide proper food, water, housing and humane care for all animals under its control pursuant to this Agreement.
 5. If the Animal Control Officer deems it necessary, the Contractor will shelter animals with extended holds for quarantine, viciously declared animals and court holds. Other animals, such as aggressive or non-domesticated animals, shall be placed in the City's shelter facility.
 6. Provide sufficient, competent and trained personnel to perform the obligations set forth in this agreement during regular business hours.
 7. Answer phone calls from the public concerning impounded animals and give instructions pertaining to the animal's release.
 8. Be available for consultation concerning animal health or endangerment issues.
 9. Verify payment of impound fees and fines to City annually to receive contractual payment.
 10. Provide quarterly financial reports to the City regarding shelter activities.

11. Provide quarterly reports of the specific disposition of animals impounded at the Brookings Humane Society shelter through an automated process.
12. Comply with all applicable federal, state and local laws, rules and regulations pertaining to animal shelters and animals.

B. Shelter Procedures. The Contractor agrees to adhere to the following shelter procedures:

1. Stray and Licensed Cats. If the owner of the animal is known or can be reasonably ascertained by an expired or current city license or rabies tag, the Contractor shall notify the owner, if possible, and preferably by telephone, informing the owner that the animal will be held at the Brookings Humane Society shelter for a minimum of five (5) full business days following impoundment. After the expiration of this period, the disposition of these animals is as per Section 14-185 of the City of Brookings Code of Ordinances, and at the discretion of the Community Service Officer in consultation with the Contractor's manager. Should an animal not be received by the Contractor, it shall be the City's responsibility to dispose of (euthanize) the animal in accordance with Section 1.B.7 of this Agreement.
2. Stray and Unlicensed Cats. If the owner cannot be reasonably identified, the animal shall be held a minimum of five (5) full business days following impoundment. After the expiration of this period, the disposition of an animal is at the discretion of the Community Service Officer in consultation with the Contractor's shelter manager. Should an animal not be received by the Contractor it shall be the City's responsibility to dispose of (euthanize) the animal in accordance with Section 1.B.7 of this Agreement.
3. Injured and/or Diseased Animals. Injured and/or diseased animals will be addressed per Section 14-46 of the City of Brookings Code of Ordinances.
4. Other Domesticated Animals. These animals do not have a specific holding period, but may be disposed of at any time at the discretion of the Contractor and/or Community Service Officer except as provided by applicable federal, state and local laws and regulations. Wild animals will not be sheltered by the Contractor.
5. Animal Redemption. Impounded animals shall be released to owners or custodians only upon satisfactory proof of ownership and payment of all applicable fees. Proof of ownership includes, but is not limited to, any government-issued license/tag or evidence of rabies vaccination. Current licenses and vaccinations will be required for impounded animals to be released.
 - a. The city will make available a Community Service or other officer during the redemption process if it is perceived that a potential or actual confrontation may occur with the owner who is or will be redeeming the animal. In this case, the Contractor will place a call to have the officer come to the shelter.
6. Animal Quarantine. Extended holds for quarantine or court holds will be placed with the understanding that the City's shelter may be used for a

temporary or short term hold until such time as arrangements can be made for a long-term hold if a long-term hold is deemed necessary.

7. Animal Destruction and Disposal. The destruction and disposal of animals shall be performed in a manner approved by the American Veterinary Medical Association Guidelines which will not subject the animal to any unnecessary pain and/or suffering.

- C. Shelter Hours of Operation. The Contractor agrees to keep the shelter facilities open to the public during the following regular working hours (except major holidays) and publish/advertise such times as follows:

12:00 p.m. – 6:00 p.m. Monday through Friday

11:00 a.m. – 4:00 p.m. Saturday

Closed Sunday

Contractor reserves the right to close the shelter due to weather, special circumstances and major fund-raising events (e.g., Paws for Wine Event).

Contractor shall provide public notification of closure as appropriate.

Contractor will provide City Animal Control personnel with a key to the shelter. This will allow Animal Control to deliver animals to the shelter during hours the shelter is closed.

Should Animal Control wish to allow retrieval of impounded animals outside normal hours, they will have access to the shelter to provide this service. Should Animal Control request Contractor's staff to come to the shelter and release an impounded animal during hours the shelter is not open, a \$50 convenience fee will be payable to cover these additional costs for staff.

The Contractor agrees to be available by telephone appointment to arrange pick up of Animal Control impounded animals during the following hours (except major holidays); The City's Animal Control Officer will be available to assist when necessary.

7:00 a.m. - 12:00 p.m. Monday - Friday (telephone appointment only)

7:00 a.m. - 11:00 a.m. Saturday (telephone appointment only)

Major holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Thursday and Friday, Christmas Eve and Christmas. The Contractor agrees to make available, at all times and on all days of the year, a specific area in the shelter for the purpose of immediately depositing animals brought in by the City Animal Control Officer or City Law Enforcement Officers. Bowls and water will be available for the animal being deposited.

- D. Shelter Facilities. The Contractor agrees to maintain the shelter facilities on a daily basis in a neat, clean and sanitary condition and in compliance with the standards set by the nationally recognized humane organizations and with all applicable laws, rules and regulations. The City shall have the right (through

properly authorized representatives) to enter upon and inspect the facilities at any time during regular working hours without prior notice.

- E. Disposition Records. The Contractor agrees to keep accurate and complete records of all animals received by it pursuant to this Agreement showing the date, place, reason and manner in which the animals were delivered to the shelter together with the disposition of the animals (including animals returned to owners). A summary of the above information shall be provided to the City on a monthly basis.
- F. Insurance. The Contractor shall indemnify and hold the City harmless in all respects from any and all claims arising out of the performance of this Agreement.

Section 2 Public Service/Length of Agreement

- A. Public Service. The City expressly recognizes the control, housing and sheltering of animals within the City are necessary for the immediate and long-term preservation of the public health, safety and welfare of the City. The City and the Contractor recognize, therefore, that the services which the Contractor provides under the terms of this Agreement constitute and fulfill a public service.
- B. Term. This Amended Agreement shall commence upon execution by both parties and shall be in effect through December 31, 2020.

Section 3 Compensation

- A. Per Animal per Service Payments. In consideration for the performance of services by the Contractor, the City agrees to pay the Contractor on a per-animal, per-service basis. The following fee schedule shall be followed:
- \$15 payment for each animal impounded by the City and sheltered with Contractor. Costs shall include administration, paperwork, and precautionary medical.
 - \$50 lump sum payment for up to five (5) days of boarding for each animal impounded by the City and boarded overnight by the Contractor. Costs are based on up to five (5) nights of sheltering prior to surrender or euthanization.
 - Owners reclaiming animals must pay Shelter Fees upon redemption and upon the Owner doing so, the City will not be obligated to pay the Shelter Fee to Contractor.
 - \$50 payment for each animal surrendered by the City or surrendered by an owner to Contractor. These animals become property of Contractor at time of surrender.

- 75% of all City fees collected, including At Large Fines, Shelter Fees, City Licenses Sold, and Tickets Paid.
- An itemized financial report of the services provided and the fee calculations shall be calculated and agreed upon at least quarterly by the Contractor and Chief of Police or his/her designee.
- The City will pay the Contractor a maximum of \$40,000 for the year 2020. The Contractor and the City's Community Service Officer shall determine the number of animals impounded, nights boarded, animals euthanized and surrendered at least twice each year and the City will pay Contractor twice per year on or by July 31st and by December 31st.

- B. Veterinary and Related Medical Care. The Contractor agrees to provide low maintenance level veterinary and related medical care to those sick or injured animals brought to the shelter facilities and to those which become sick during impoundment. If an animal is redeemed by its owner, such owner shall be responsible for all veterinary and related medical costs. If no owner can be identified, the City agrees to be responsible for the costs of the low maintenance level veterinary and related medical care for animals under City impound with the prior approval of the Animal Control Officer or the Chief of Police or designee.

Section 4 Additional Obligations

- A. Liaison Officer. The Brookings Regional Humane Society Board President or designee shall act as the Contractor's liaison officer with the City. The City Manager of the City of Brookings or designee shall act as liaison officer of the City with the Contractor and shall be responsible for the administration and enforcement of this agreement. All reports, recommendations and all other correspondence shall be directed to the appropriate person(s) responsible under this Agreement whose duty it is to assure compliance with this Agreement.
- B. Confidentiality. The Contractor agrees, to the extent permitted by law, to keep all information it receives concerning the names, addresses and telephone numbers of complainants, witnesses and license holders confidential. The Contractor shall, to the greatest extent possible, protect an individual's right to privacy and shall neither circulate nor permit to be circulated this information for any purpose(s) unrelated to the scope of this agreement. The Contractor shall have the right, however, to release that information which may be necessary for the location of the animal's owner or for the acquisition of consent for veterinary and related medical treatment.
- C. Mutual Cooperation. The City agrees to provide all reasonable cooperation and assistance to the Contractor, its officers, agents and employees in order to facilitate and accomplish the mutual objectives of this Agreement. All animal control/shelter forms shall be issued in the name of the City and supplied by the City to the Contractor at the City's expense. The City shall use such items only in

strict confidence with the instructions and limitations set by the Contractor. The City agrees to comply with all of the Contractor's reasonable and necessary official written procedures such as the provision of the cage number, the identification of a rabies tag number, the breed, description and sex of the impounded animals. The City and the Contractor acknowledge that these procedures may, from time to time, be amended. The City shall provide the proper training of their employees performing these duties.

- D. Conflict of Interest. No officer or employee of the City having the power, authority or duty to perform an official act or action related to this Agreement shall acquire any interest in this Agreement, and no officer or employee of the City shall solicit, accept or grant a present or future gift, favor, service or other thing of value from or to any person involved in this Agreement.

Section 5

Default, Termination, and Remedies

A. Default.

1. Procedure for Default. In the event that either party fails to perform its obligations under this agreement, the aggrieved party shall provide (in order to declare default) a written notice to the other party specifying the default. Notice shall be given in the manner provided in Section 6, Paragraph D. This Paragraph shall not, however, apply to default by nonpayment on the part of the City, the procedures and remedies for which are outlined in Section 5, Paragraph B2. The party in default shall have fifteen (15) days from the date of receipt of the notice to remedy the default. If the default has not been cured within this period, the aggrieved party shall have the right to terminate this Agreement by providing a written Notice of Termination to the other party. Termination of this Agreement shall be accomplished by and effective upon the receipt of a Notice of Termination. This Notice shall be provided in the manner specified in Section 6, Paragraph D.
2. Waiver or Extension. The aggrieved party, however, shall have the right to either waive the default or to extend the time within which to cure the default. The waiver or extension must be in writing and signed by an authorized representative of the aggrieved party in order to be binding upon the aggrieved party. A waiver or extension for one default shall not act as a waiver or extension for subsequent defaults.

B. Termination.

1. General. This Agreement may be terminated due to the default of one of the parties or may be terminated by the mutual consent of the parties. Consent must be in writing and signed by an authorized representative of each party in order to be valid. This Agreement may also be terminated without cause by either party upon sixty (60) days written notice to the

other party. Notice shall be provided in the manner specified in Section 6, Paragraph D.

2. Termination-Default-Remedies. In the event of termination due to the default of one of the parties, the aggrieved party shall also have the right, in addition to the right of termination, to assert and maintain any and all claims and/or actions for damages or other appropriate remedies. The aggrieved party may also elect not to terminate this Agreement or may elect to maintain an action for damages or other appropriate remedies for default. Either party may, at any time, maintain an action either to construe or enforce this Agreement.

Section 6 Miscellaneous Provisions

- A. Entire Agreement/Modification. This Agreement constitutes the entire agreement of the parties concerning the subject matter described herein. All prior contemporaneous negotiations and understandings between the parties are embodied in this Agreement, and it supersedes all prior agreements and understandings between the parties hereto relating to the subject of this Agreement. No alteration or other modification of this Agreement shall be effective unless such modification shall be in writing and signed by the parties.
- B. Severability. In the event any portion of this Agreement should become invalid, the remainder of the Agreement shall remain in full force and effect.
- C. Binding Effect. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. This Agreement shall be binding upon the successors in interest of the respective parties. This Agreement may be assigned only with the express written consent of the non-assigning party.
- D. Notice. Any notice required under the terms of this Agreement shall be deemed delivered and received when delivered in person or when mailed by certified mail to the parties at the addresses set forth in this Agreement.

IN WITNESS WHEREOF, the City and the Contractor herein acknowledge that they have read, understand and do freely and voluntarily execute this Amended Agreement on the day and year written below.

Dated this 15th day of December, 2020.

ATTEST:

Paul Briseno, City Manager

Bonnie Foster, City Clerk

Dated this ____ day of December, 2020.

Ashley Biggar, Board President
120 W. Second Street South
Brookings, SD 57006