

HUMANE SOCIETY ANIMAL CONTROL & ANIMAL SHELTER AGREEMENT

THIS AGREEMENT made and entered into this ___ day of July, 2000, between the City of Rapid City, South Dakota, a municipal corporation, hereinafter "CITY" and the County of Pennington, hereinafter "COUNTY" and the Humane Society of the Black Hills, a South Dakota non-profit corporation, with its principal place of business in Rapid City, South Dakota, hereinafter "SOCIETY," witnesseth:

WHEREAS, the parties desire that the SOCIETY shall provide services in operation of the animal control function to prevent or reduce potential harm to persons, property, or animals by controlling the number of unrestrained animals, and insuring that stray and unwanted animals are impounded at the shelter.

WHEREAS, the parties desire that the SOCIETY shall provide services in operation of an animal shelter in a manner such that the comfort of the animals is the prime consideration. The animal shelter shall be operated by the SOCIETY to ensure that stray and unwanted animals are impounded at the animal shelter and subsequently returned to their owners, adopted into good, responsible homes, or humanely euthanized.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is hereby agreed by and between the parties hereto as follows:

I.

This Agreement shall be effective from April 1, 2001 until March 31, 2004, unless sooner terminated. This agreement may be terminated at any time by either party upon sixty (60) days written notice by certified mail to the other party, unless either party requests immediate termination based upon a determination of the Council of the CITY and the Commission of the COUNTY of just cause, or upon mutual agreement. This Agreement may be renewed for an additional term of one (1) year from March 31, 2004 upon mutual agreement reached no later than sixty (60) days prior to any March 31 occurring during the term of this Agreement.

II.

The SOCIETY shall provide the following pursuant to the Animal Control portion of this Agreement:

- A. **SERVICES.** The SOCIETY shall provide the following services:
- (1) Furnish and maintain equipment necessary for the operation of the animal control functions in compliance with state laws and CITY/COUNTY ordinances.
 - (2) Competent and qualified agents of the SOCIETY to perform the duties of an animal control (humane) officer(s) for the CITY/COUNTY.

- (3) Appropriate vehicles equipped with the equipment necessary for the performance of its duties pursuant to this Agreement including, but not limited to, devices necessary to capture, hold, and transport animals in a safe, humane manner.
- (4) Uniforms for SOCIETY's employees which clearly identify the employees as Humane Officers.
- (5) Proper housing for all impounded animals.
- (6) Qualified and competent individuals to operate and manage the shelter facility as Society's agents.

B. ANIMAL CONTROL OFFICERS. The CITY/COUNTY shall authorize competent and qualified personnel of the SOCIETY to serve as Humane Officers to enforce CITY/COUNTY ordinances and state law relating to animal control. Designated Humane Officers shall be authorized to issue citations, according to the procedure authorized by the liaison officer of the Rapid City Police Department and the Pennington County Sheriff's Office, for violations of the CITY/COUNTY animal control ordinances and state statutes relating to cruelty and abuse. It is specifically understood that the Humane Officers shall not be entitled to enforce any CITY/COUNTY ordinances other than those provided for and authorized by this Agreement.

C. SCHEDULE OF ENFORCEMENT. SOCIETY shall schedule and maintain personnel to perform the duties of animal control officers within the "service area." The "service area" is defined as that area within the outlined portion of the map attached hereto as "ATTACHMENT A" and it is anticipated by the parties hereto that, notwithstanding the total area encompassed by ATTACHMENT A, the majority of animal control services required hereunder will occur within the three-mile corporate limits of the City of Rapid City. SOCIETY shall provide animal control services as follows:

- (1) (i) Monday through Friday, 7:00 a.m. to 5:00 p.m. Saturday, 8:00 a.m. to 4:00 p.m..
(ii) Notification of any changes in duty hours will be provided to the liaison officer designated by the Rapid City Police Department and the Pennington County Sheriff's Department.
- (2) SOCIETY shall provide emergency services after regular hours on an on-call basis. 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 has been detained by law enforcement officials or other government officials 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 or the Pennington County Sheriff is unable to handle the situation.
- (iv) Upon confirmation by medical authority or a law enforcement officer that an animal has bitten a human.

- (3) SOCIETY shall prepare and submit monthly reports to CITY/COUNTY of each emergency call made during the preceding month.
- (4) SOCIETY shall be allowed seven (7) holidays per year on which calls relating to animal control shall be handled on an emergency basis only. The designated holidays for the term of this Agreement shall be: New Year's Day, Good Friday, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas.
- (5) SOCIETY shall be allowed to close the second Friday of each month for staff training and building/equipment maintenance. Calls relating to animal control shall be handled on an emergency basis only.

D. OPERATIONS. In managing the operations of the animal control functions, the SOCIETY shall:

- (1) Comply with the applicable laws of the State of South Dakota, CITY/COUNTY ordinances, and such reasonable administrative directives as may, from time to time, be issued by the CITY/COUNTY liaison officer(s).
- (2) Establish, keep, and maintain a daily register of all animals impounded by the Humane Officers which shall include the disposition of all animals impounded or released from the animal shelter, on forms provided by SOCIETY.
- (3) Not release or otherwise dispose of any animal impounded with SOCIETY under the terms of this Agreement unless and until all impoundment periods prescribed by the CITY/COUNTY ordinances have been satisfied unless such animal is determined to have been abandoned or, in the case of cats, deemed feral.
- (4) Maintain its own system of dispatch.
- (5) SOCIETY shall submit reports on a monthly basis and an annual summary to the Finance Officer of the City and the County Auditor or the County listing the following information in regard to the previous month:
 - (i) Total number of calls dispatched;
 - (ii) Total number of animals taken into custody including description of animal;
 - (iii) Total number of animals taken into custody by animal control officers;
 - (iv) Number of responses to emergency animal service.
 - (v) Any other information requested by CITY/COUNTY.

(6) Establish a procedure whereby complaints concerning SOCIETY's animal control personnel and its performance of required functions can be reviewed by the CITY/COUNTY.

E. ADDITIONAL DUTIES. In addition to its general obligations and duties, SOCIETY shall:

- (1) 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 who have bitten a human.
 - (ii) Skunks, raccoons, or other wildlife of similar size who pose a health hazard to human life.
 - (iii) All other calls on a first-come first-served basis for a period of no more than three (3) days per trap per person, unless otherwise determined by the Humane Officer.
- (2) Dispose of all dead dogs, cats, and other domestic animals similar in size upon request. The City will allow the SOCIETY to dispose of animals at the Rapid City Sanitary Landfill at no cost to SOCIETY.
- (3) Provide additional emergency animal control assistance to law enforcement when requested.

III.

The SOCIETY shall provide the following pursuant to the Animal Shelter portion of this Agreement:

A. SOCIETY shall maintain office hours at the animal shelter for no fewer than forty (40) hours during any week, exclusive of those weeks during which a holiday occurs and such additional hours as may be necessary, and by agreement of the parties, to assure compliance with the Rapid City/Pennington County Ordinances or state law, for the purpose of transacting business in connection with the obligations of SOCIETY under this Agreement, and for the purpose of receiving animals or for accepting applications for redemption of impounded animals. Additionally, SOCIETY shall:

- (1) Appoint and/or maintain competent and qualified agents for carrying out the obligations under this Agreement;
- (2) Collect fees for animal licenses, rabies observation, spay and neuter deposits, 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/COUNTY shall not be responsible for the payment of any costs for services for which a fee has already been collected by SOCIETY;
- (3) 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;

(4) Submit monthly reports to the Finance Officer of the City and the County Auditor for the County listing the following information in regard to the previous month:

- (i) Total number of animals impounded at the shelter facility, including, when available, the location animal came from;
- (ii) Total number of animals brought in by animal Humane Officers;
- (iii) Total number of animals brought in by law enforcement;
- (iv) Total number of animals brought in by others;
- (v) Purpose animal brought to shelter;
- (vi) Total number of days animals kept prior to euthanization;
- (vii) Total number of days animals kept for rabies observation;
- (viii) Total number of days animals kept by order of Pennington County Sheriff or the Rapid City Police Department or judicial order;
- (ix) Total number of rabies tests performed;
- (x) Final disposition of animal
- (xi) Number of animals registered/licensed and total fees collected;
- (xii) Number of animals receiving microchip implantation;
- (xiii) Total monies collected through reclaim fees by owners;
- (xiv) Any other information requested by CITY/COUNTY.

(5) Provide sufficient personnel, paid or otherwise, as well as additional kennels, vehicles, telephone service and office as may be needed, and any other facilities that may be required to humanely house dogs, cats, and other animals that may be impounded. All books and records of SOCIETY shall be open for inspection by the designee(s) of CITY/COUNTY upon reasonable request to determine accuracy and compliance with this Agreement and applicable law;

(6) 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 Revised Ordinances of the City of Rapid City and County Ordinance 2A. 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 animals impounded pursuant to any action at law will remain in the custody of the shelter pending the outcome of a judicial proceeding and order of the court.

(7) Law enforcement officials picking up injured animal(s) when 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. SOCIETY shall be responsible for the cost (not to exceed \$50.00) of any emergency treatment necessary to providing a reasonable standard of care.

(8) SOCIETY shall 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 to law enforcement to such space.

IV.

The SOCIETY shall maintain the following minimum limits of insurance coverage:

1. Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:

Bodily Injury by Accident	\$100,000	Each Accident
Bodily Injury by Disease	\$100,000	Each Employee
Bodily Injury by Disease	\$500,000	Policy Limit

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

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

3. Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) Each Claim and Three Million Dollars (\$3,000,000) Aggregate.

4. Commercial Automobile Insurance with a Combined Single Limit of not less than One Million Dollars (\$1,000,000) Each Person and One Million Dollars (\$1,000,000) Each Occurrence.

5. Commercial Umbrella Insurance providing excess liability over primary coverage of Employers' Liability, Commercial General Liability, Professional Liability, and Commercial Automobile Liability in limits of not less than One Million Dollars (\$1,000,000) Each Occurrence and One Million Dollars (\$1,000,000) Aggregate.

6. Additional Insurance Requirements. Each insurance policy shall include the following conditions by endorsement to the policy:

A. Each policy shall require that forty-five (45) days prior to expiration, cancellation, non-renewal or any material change in coverages or limits, a notice thereof shall be given to the CITY/COUNTY by certified mail to: City Finance Office, 300 Sixth Street, Rapid City, South Dakota 57701 or to such other address as the CITY/COUNTY may designate in writing. The SOCIETY shall

also notify CITY/COUNTY in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material changes in coverage received by said SOCIETY from its insurer; and nothing contained herein shall absolve SOCIETY of this requirement to provide notice.

B. Companies issuing the insurance policy, or policies, shall have no recourse against the CITY/COUNTY for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of the SOCIETY.

C. The term "CITY/COUNTY" shall include all Boards, Commissions, Divisions, Departments, and offices of the CITY/COUNTY and individual members and employees thereof in their official capacities, and/or while acting on behalf of the CITY/COUNTY.

D. The CITY/COUNTY shall be endorsed to the required policy or policies as an additional insured, exclusive of professional liability insurance.

E. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by the CITY/COUNTY, to any future coverage, or to CITY/COUNTY's Self-Insured Retentions of whatever nature.

The SOCIETY waives subrogation rights for loss or damage against the CITY/COUNTY.

V.

At any time during normal business hours, and as often as may reasonably be deemed necessary, the CITY/COUNTY representatives may observe the SOCIETY's operations and the SOCIETY shall make available to the CITY/COUNTY for its examination its records to verify compliance with this Agreement. The CITY/COUNTY may audit, examine, copy, and make excerpts or transcripts from such records, and may make audits of all pertinent data related to compliance with the provisions of this Agreement.

The designated representative of the CITY/COUNTY may, at any time, and without notification, directly observe the SOCIETY's operation of the animal shelter or the animal control functions, and a designated representative may ride as "third person" on any of the SOCIETY's animal control vehicle(s) at any time. In exercising this right to inspection and observation, the designated representative shall conduct himself in a professional and courteous manner, shall not interfere in any way with SOCIETY's employees in the performance of their duties, and shall at all times be respectful of the SOCIETY's employer/employee relationships.

The CITY/COUNTY's right to observe and inspect operations or records in the SOCIETY's business office shall, however, be restricted to normal business hours, and reasonable notification shall be given the SOCIETY in advance of any such visit.

The SOCIETY will provide an operations report to the CITY/COUNTY on a monthly basis at the SOCIETY's expense. The SOCIETY will provide any additional reports that may reasonably be required by the CITY/COUNTY.

VI.

Humane Officers employed by the SOCIETY shall not carry firearms. In the event that the Humane Officers finds it necessary to have a dangerous animal destroyed, the appropriate law enforcement agency shall be contacted to destroy the animal.

VII.

CITY/COUNTY agrees to pay the SOCIETY for the performance of its obligations hereunder the sum of Two-Hundred Sixty-five Thousand Dollars (\$265,000.00) for the first year with a two percent (2%) increase for each of the following two years. CITY/COUNTY shall remit monthly installments to the Society as follows:

DATE	CITY	COUNTY
April 1, 2001 to March 31, 2002	\$14,351.17	\$7,729.17
April 1, 2002 to March 31, 2003	14,641.25	7,883.75
April 1, 2003 to March 31, 2004	14,934.08	8,041.43

VIII.

CITY/COUNTY agrees to allow the SOCIETY to retain as its sole property the following: all boarding fees collected pursuant to its operation of the shelter; all license and/or registration, impoundment, and reclaim fees collected. SOCIETY agrees to inform the CITY/COUNTY monthly as to the number of licenses and/or registrations issued.

It is specifically agreed and understood between the parties that any fines collected by any Court for the CITY/COUNTY as a result of any violation shall be retained by the CITY/COUNTY as its sole property unless the Court otherwise directs.

The SOCIETY shall charge and collect from all persons who reclaim impounded animals all fees set forth from time to time in the revised ordinances of the CITY/COUNTY concerning animal control. All such fees collected shall be accounted for at the time of submitting the monthly reports required by this Agreement.

IX.

It is further agreed, by and between the CITY/COUNTY and the SOCIETY, as follows:

(a) That the SOCIETY is and at all times shall remain an independent contractor with the CITY/COUNTY, and no relationship of agency shall be deemed to exist between the SOCIETY and the CITY/COUNTY.

(b) That the SOCIETY shall neither assign any of the rights nor delegate any of the duties imposed upon it under the provisions of this Agreement without having first obtained the written permission of the CITY/COUNTY.

(c) That this Agreement may not be enlarged, modified, or altered, except in writing, signed by the parties as an amendment hereto.

(d) That no waiver or any breach of this Agreement shall be held or construed to be a waiver of any subsequent breach thereof.

(e) That the only expenditures to be made by the CITY/COUNTY under and by virtue of this Agreement shall be those payments specifically provided herein.

(f) That it is expressly understood and agreed that the payment of salaries/workmen's compensation insurance and benefits of personnel employed by the SOCIETY as Humane Officers shall be the sole responsibility of the SOCIETY. Further, it is understood and agreed by the SOCIETY and the CITY/COUNTY that personnel employed by the SOCIETY as Humane Officers are not employees of the CITY/COUNTY and are not entitled to any benefits as employees of the CITY/COUNTY.

(g) If any party materially breaches any part or clause of this Agreement, the non-breaching party shall provide to the breaching party notice of such breach and, thereafter, a reasonable opportunity to correct the breach. If the breach is not corrected within thirty (30) days or such longer period as may be reasonable under the circumstances, the non-breaching party may terminate this Agreement upon notice to the breaching party.

(h) That the SOCIETY shall provide the CITY/COUNTY a list of all employees including title and job description and shall provide updated or amended information.

X.

It is hereby agreed by and between the parties that strict and timely compliance with the applicable statutes of the State of South Dakota, ordinances and resolutions of the City of Rapid City and Pennington County, and the provisions of this Agreement, all as the same relate to the enforcement of the CITY/COUNTY ordinances and resolutions relating to animal control shall be of the essence.

XI.

Conditions and circumstances which shall constitute a major breach of contract by the SOCIETY shall include but not be limited to the following:

1. Failure of the SOCIETY to provide service in a manner which enables the CITY/COUNTY and the SOCIETY to adequately provide animal control/animal shelter services within the service area and to ensure compliance with the applicable federal and state laws as well as CITY/COUNTY

ordinances. Minor infractions of the requirements shall not constitute a major breach of the awarded contract.

2. Supplying to CITY/COUNTY false or misleading information or supplying information so incomplete as to effectively mislead.
3. Willful falsification of data supplied to the CITY/COUNTY or their designees during the course of operations, including by way of example but not by way of exclusion, dispatch data, service data, financial data, or falsification or deliberate omission of any other data required under the awarded contract.
4. Failure to maintain equipment in accordance with good maintenance practices.
5. Failure by the SOCIETY to furnish key personnel of quality and experience as required under this Agreement.

In the event the CITY/COUNTY determines that a major breach has occurred, and if the nature of the breach is, in the CITY/COUNTY's opinion, such that public health and safety are endangered, and after the SOCIETY has been given notice and reasonable opportunity to correct said deficiency, the matter shall be presented to the Council for the CITY and the Commission for the COUNTY for review. If, after a hearing on and investigation of the matter, the Council or and the Commission determines that a major breach has occurred and that public health and safety would be endangered by allowing the SOCIETY to continue its operations, the SOCIETY shall cooperate completely and immediately with the CITY/COUNTY to effect a prompt and orderly takeover of the services provided under this Agreement by the CITY/COUNTY.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above indicated, effective April 1, 2001.

HUMANE SOCIETY OF THE BLACK HILLS

President & CEO

CITY OF RAPID CITY

COUNTY OF PENNINGTON

Mayor

Chairperson, Bd. of Commissioners

ATTEST:

ATTEST:

Finance Officer

(SEAL)

County Auditor

(SEAL)

State of South Dakota)

) SS.

County of Pennington)

On this the _____ day of _____, 2000, before me, the undersigned officer, personally appeared Richard Johnstone, President and CEO of the Humane Society of the Black Hills, known to me, or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Notary Public

(SEAL)

My Commission Expires:

State of South Dakota)

) SS.

County of Pennington)

On this the _____ day of _____, 2000, before me, the undersigned officer, personally appeared Jim Shaw and James Preston, known to me, or satisfactorily proven to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

Notary Public

(SEAL)

My Commission Expires:

State of South Dakota)
) SS.
County of Pennington)

On this the _____ day of _____, 2000, before me, the undersigned officer, personally appeared Mark Kirkeby and Julie Pearson, known to me, or satisfactorily proven to be the Chairperson of the Board of Commissioners and County Auditor, respectively, of the County of Pennington, and that they, as such Chairperson and Auditor, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the County of Pennington by themselves as Chairperson and Auditor.

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

Notary Public

(SEAL)

My Commission Expires: