



Staff Report

Agenda Item: **Verde Valley Humane Society Impound Animal Agreement –**
Approval of a 2010-2011 Verde Valley Humane Society Impound
Animal Agreement.

Staff Contact: Kathy Bainbridge, Town Clerk/Finance Director

Meeting Date: June 22, 2010

Background: Since 1993 the Town of Clarkdale has been contracting with the Verde Valley Humane Society (VVHS) for animal impound services. The cost of these services for 2008-2009 was \$8,380.80 and 2009-2010 was \$7,600.00. The agreement cost is based on the number of impounds the Town of Clarkdale experienced last year along with associated costs to VVHS of such impounds.

The cost for the 2010-2011 agreement is \$7,713.96. The new agreement has been accommodated for in the 2010-2011 Fiscal Year Budget.

Recommendations: To approve the 2010-2011 Verde Valley Humane Society Impound
Animal Agreement.

AGREEMENT BETWEEN
THE TOWN OF CLARKDALE
AND THE
VERDE VALLEY HUMANE SOCIETY

This Agreement is made and entered into this 1st day of July 2010, by and between The Town of Clarkdale, a municipal corporation, (hereinafter called "the TOWN") and Verde Valley Humane Society, Inc., an Arizona nonprofit corporation, (hereinafter called "the HUMANE SOCIETY").

WHEREAS, the TOWN desires to provide an animal shelter facility for the benefit of its citizens; and

WHEREAS, the HUMANE SOCIETY desires to operate such a facility for the benefit of the TOWN; and

WHEREAS, the TOWN and the HUMANE SOCIETY are empowered to make such a Agreement;

NOW, THEREFORE, the parties do hereby mutually covenant and agree as follows:

1. *PURPOSE.* This agreement is made for the purpose of providing services of an animal shelter for the residents of the TOWN.

2. *HUMANE SOCIETY SERVICES.*

A. The HUMANE SOCIETY agrees to receive all stray or at-large animals delivered by the Animal Control Officers of the TOWN and stray or at-large animals delivered by private citizens of the TOWN, and to provide all necessary care for these animals for a minimum of seventy-two (72) hours, unless the animal is claimed sooner by its owner. Any diseased, injured or feral animals may be destroyed at any point after impoundment in order to relieve the animal from suffering, to prevent the spread of disease, or to protect the safety of the other animals already housed at the HUMANE SOCIETY.

There shall be no charge for stray canines or felines brought to the HUMANE SOCIETY by citizens of the TOWN. However, an owned animal surrendered by its owner or the owner's agent shall require a surrender fee. If the animal surrendered is to be held for possible adoption, a surrender fee is assessed per animal. These fees shall be payable by the owner at the time of surrender.

If the owner surrenders an animal directly at the HUMANE SOCIETY to be euthanized or cremated, the owner shall be responsible for all applicable charges for these services at the time of surrender. If Animal Enforcement Officer transports an owner-surrendered animal to the HUMANE SOCIETY as a courtesy to the owner, the fees shall still be payable as if the owner had personally surrendered the animal at the HUMANE SOCIETY. All owner surrenders transported by Animal Enforcement Officer must be

approved by the HUMANE SOCIETY Director prior to the transport of the animal to the HUMANE SOCIETY. Acceptance of owner surrendered animals will be at the discretion of the HUMANE SOCIETY, and based on space availability. The TOWN, by transporting the owned-animal to the HUMANE SOCIETY, accepts the responsibility for paying all applicable fees in the event the owner does not do so within thirty (30) days of the surrender date. The HUMANE SOCIETY shall not absorb the surrender, euthanization or cremation costs of owner-surrendered animals brought in by Animal Enforcement Officer.

Pursuant to A.R.S. Title 11, §1013, the HUMANE SOCIETY, as agent for the TOWN, may place an unclaimed animal which has been impounded for 72 hours or more, up for adoption or effect the disposition of the animal in a humane fashion. The HUMANE SOCIETY may dispose of sick, diseased, injured or feral animals at any point following impoundment. There is no mandatory minimum holding period in such cases as long as the disposition is done to relieve the animal of suffering, to prevent the spread of disease, or to secure the safety and welfare of the HUMANE SOCIETY staff, public, or the remaining animals at the HUMANE SOCIETY. The HUMANE SOCIETY shall be responsible for all costs of euthanizing these animals. All euthanization shall be done by a licensed veterinarian or a person certified by a veterinarian, and in compliance with the provisions of A.R.S. Title 11, §1021. The HUMANE SOCIETY shall be responsible for the disposition of the remains of any animal so destroyed.

B. All impound fees received by the HUMANE SOCIETY for animals whose owners reside within TOWN limits shall be payable to and retained by the HUMANE SOCIETY. All adoption fees shall be payable to and retained by the HUMANE SOCIETY. The HUMANE SOCIETY shall establish and implement a spay/neuter program, in accordance with the provisions of A.R.S. Title 11, §1022, to provide assistance in animal population control in the Clarkdale area.

3. FEES. The TOWN shall pay to the HUMANE SOCIETY the sum of *Seven Thousand-Seven – Hundred-Thirteen-Dollars and Ninety-six Cents* (\$7,713.96) in twelve (12) monthly payments of *Six-Hundred-Forty-Two Dollars and Eighty Three Cents* (\$642.83). Those canines and felines required by the TOWN to be confined, and/or quarantined in the Shelter in order to be observed for signs of disease, or as a consequence of having bitten, or for some other appropriate reason, the TOWN shall pay to the HUMANE SOCIETY the sum of *Ten Dollars* (\$10.00) per day of confinement, in the event these charges are not paid by the animal's owner. The HUMANE SOCIETY shall not absorb the costs for mandatory confinement or quarantine.

4. PERSONNEL. The HUMANE SOCIETY shall be responsible for staffing the HUMANE SOCIETY, with paid personnel or volunteers. All compensated personnel shall be considered employees of the HUMANE SOCIETY which shall be responsible for the payment of wages, salaries and fringe benefits. Under the supervision of the HUMANE SOCIETY personnel, community service workers from the several area courts may be utilized in place of paid workers. The HUMANE SOCIETY shall insure that the HUMANE SOCIETY is sufficiently staffed to provide adequate care for impounded animals.

5. RESPONSIBILITY OF ANIMAL ENFORCEMENT OFFICER. The Animal Enforcement Officer, or an equivalent person working on behalf of the TOWN, shall retain control of, and responsibility for, the impounded animal until said animal is properly confined in the kennel and the appropriate paper work is completed by the Animal Enforcement Officer. It shall be only at this point that the control of, and responsibility for, the animal becomes that of the HUMANE SOCIETY staff may, at its discretion, assist an Animal Enforcement Officer, but shall be under no obligation to do so.

6. BUSINESS RECORDS. The HUMANE SOCIETY agrees to maintain records of all the TOWN animals received, adopted, claimed by their owners (RTO), or destroyed. The HUMANE SOCIETY agrees to provide the Town completed documentation within five (5) working days of all impounded animals claimed (RTO) to the owner.

7. TERM. The term of this Agreement shall be for a period of twelve (12) months, commencing on 1 July 2010, and ending 30 June 2011. At the expiration of this Agreement, if the TOWN continues to use the HUMANE SOCIETY services, it shall do so under the terms of this Agreement until a new Agreement between the parties is signed. Any increase or decrease in fees under the terms of the new Agreement shall be retroactive to the beginning date of the new Agreement and shall be due and payable to the party owed within thirty (30) days of signing the new Agreement.

8. ENTIRE AGREEMENT; MODIFICATION. This Agreement represents the entire agreement between the parties hereto, and supersedes any prior agreement or understanding of the parties, whether oral or written. The parties may, from time to time, agree to modify the terms hereof as may be reasonable and necessary to maintain an efficient, HUMANE SOCIETY operation and provide adequate services to the residents of the TOWN. No modification of this Agreement shall be binding unless stated in writing and signed by both parties hereto.

9. INDEMNIFICATION. Each party hereto shall indemnify, defend, and hold harmless the other party from all claims, losses, damages, or injury of any kind or character, including the other party's attorney's fees and costs of defense arising from the negligent performance of services by that party and/or its employees or agents.

10. RESERVATION OF RIGHTS. Notwithstanding any other provision of this Agreement to the contrary, any agreement by one party to indemnify, defend, and hold harmless the other party shall be limited to, and be payable only from, the indemnifying party's contractually assumed liability insurance coverage available as a part of its general liability insurance program.

11. DISPUTE MEDIATION. If a dispute arises out of or relates to this Agreement, or breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within ten (10) days, either party may request the Presiding Judge of the Superior Court of Yavapai County to assign a mediator from a list of experienced mediators maintained by the Arizona Municipal Risk Retention Pool.

12. CANCELLATIONS FOR CONFLICT OF INTEREST. The parties agree that this Agreement may be cancelled for conflict of interest, in accordance with A.R.S. §38-511.

13. This Agreement shall be filed with the Secretary of State or the County Recorder as provided in A.R.S. 11-952.

14. All books, accounts, reports, files and other records relating to the Agreement shall be subject to inspection and audit by the Town for five years after completion of the Agreement as provided in A.R.S. 35-214.

15. Non-Availability of Funds: Every payment obligation of the Town under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the Town at the end of the period for which the funds are available. No liability shall accrue to the Town in the event this provision is exercised, and the Town shall not be obligated or liable for any future payments as a result of termination under this paragraph.

16. Legal Arizona Workers Act Compliance. The HUMANE SOCIETY hereby warrants that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to The HUMANE SOCIETY employment of its employees, and with the E-Verify requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). CONTRACTOR shall further ensure that each subcontractor who performs any work for CONTRACTOR under this Agreement likewise complies with the State and Federal Immigration Laws.

The HUMANE SOCIETY agrees and warrants that the TOWN shall have the right at any time to inspect the books and records of the HUMANE SOCIETY and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws. The HUMANE SOCIETY agrees that any act by the HUMANE SOCIETY or subcontractor that result in the impediment or denial of access of the books and records of THE HUMANE SOCIETY or subcontractor shall be a material breach of the Agreement on the part of the HUMANE SOCIETY.

Nothing herein shall make the HUMANE SOCIETY or subcontractor an agent or employee of the TOWN. Nothing herein shall act to establish privity of Agreement between the TOWN and any subcontractor.

Any breach of the HUMANE SOCIETY or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Agreement subjecting the HUMANE SOCIETY to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the HUMANE SOCIETY shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor (subject to the TOWN approval) as soon as possible so as not to delay project completion and at no additional

expense to the TOWN. Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of the HUMANE SOCIETY.

The HUMANE SOCIETY shall advise each subcontractor of the TOWN's rights and the subcontractor's obligations under this Article by including a provision in its Agreement with each subcontractor in the following form:

SUBCONTRACTOR hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to SUBCONTRACTOR's employees, and with the E-Verify requirements of A.R.S. §23-214(A). SUBCONTRACTOR further agrees that the Town of Clarkdale may inspect the SUBCONTRACTOR'S books and records to insure that SUBCONTRACTOR is in compliance with these requirements. Any breach of this paragraph by SUBCONTRACTOR will be deemed to be a material breach of this Agreement subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this Agreement.

17. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Town Clerk Town of Clarkdale 39 N. Ninth Street P.O. Box 308 Clarkdale, AZ 86324	Town Attorney Boyle, Pecharich, Cline, Whittington & Stallings, P.L.L.C. Attention: Robert S. Pecharich 125 North Granite Street Prescott, AZ 86301
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18. In accordance with ARS 11-952(D) the attached written determination of each party's legal counsel that the parties are authorized to enter into this Agreement and that the Agreement is in proper form.

19. The parties agree to comply with Executive Order 99-4 concerning equal opportunity.

IN WITNESS WHEREOF, the parties have executed this Agreement the 22nd day of June, 2010.

TOWN OF CLARKDALE

VERDE VALLEY HUMANE SOCIETY

Doug Von Gausig, Mayor

Nick Hunseder, President

(Town of Clarkdale Seal)

ATTEST:

Kathy Bainbridge, Town Clerk

Cyndi Sessoms, C.E.O.

ATTORNEY APPROVAL FORM

Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the Town of Clarkdale and Clarkdale Fire District and find the Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona and the Town Code.

Dated this ____ day of _____, 2010

Robert S. Pecharich
Boyle, Pecharich, Cline, Wittington & Stallings, P.L.L.C.
Clarkdale Town Attorney

Pursuant to ARS 11-951 through 11-954 the undersigned has reviewed the attach Intergovernmental Agreement between the Town of Clarkdale and Clarkdale Fire District and find the Agreement to be in proper form and within the powers and authority granted to the Clarkdale Fire District under the laws of the State of Arizona and the

Dated this ____ day of _____, 2010

Attorney for Verde Valley Humane Society