

**AGREEMENT BETWEEN THE CITY OF BISBEE AND
THE FRIENDS OF THE BISBEE ANIMAL SHELTER,
A NONPROFIT CORPORATION,
FOR THE OPERATION OF AN ANIMAL SHELTER IN BISBEE**

The City of Bisbee ("City") and the Friends of Bisbee Animal Shelter ("Friends"), a nonprofit corporation organized under the laws of Arizona, hereby agree to allow the City to employ the Friends as an independent contractor to operate an Animal Shelter in Bisbee subject to the terms and conditions indicated herein. This agreement is authorized by the City of Bisbee's Charter, and A.R.S. §§ 9-240, 9-499.04, and 9-500.05.

WHEREAS, the City owns and operates an Animal Shelter, located at 938 S. Tovreaville Road, Bisbee, Arizona, consisting of the building, all of its contents, and one automobile (the "Animal Shelter") used for impounding and holding dogs and cats; and

WHEREAS, City staff that currently operates the Animal Shelter consists of two part-time employees working approximately 50 hours per week; and

WHEREAS, Friends desires to assume responsibility for operating the Animal Shelter, and the City desires that Friends assume such responsibility,

NOW, THEREFORE, IT IS MUTUALLY AGREED that the City shall retain Friends as an independent contractor to operate, maintain, and manage the Bisbee Animal Shelter upon the following terms and conditions:

1. The City agrees to license the Animal Shelter to Friends on the terms set forth herein. Upon a complete inventory of the building done by Friends within 30 days, the City agrees to license Friends to use all items contained in and adjacent to the shelter building, including one automobile. The City further agrees to license equipment and computer software to Friends as set forth on Exhibit A hereto, including all computer equipment, and to provide Friends with passwords and full access to the Bisbee Animal Shelter's Facebook, Shelter Manager, and Petfinder web pages in order to facilitate the continuation of the shelter's established presence.

2. Friends shall assume responsibility for operating the Animal Shelter, and for providing all of the staff, regular interior maintenance that any tenant would be required to provide, and equipment required. These responsibilities include, but are not limited to: providing adequate food, water, sanitation services, health and veterinary services, and all other requirements for the animals located there; and for providing all of the administrative services required for this facility. The City will be responsible for maintaining the premises and for paying all utilities

due and owing as of the effective date. Friends shall notify the City within a reasonable time of any maintenance needs.

3. It is understood and agreed that the City will be terminating the employment of the two current part-time City employees effective as of the effective date of this Agreement and, thereafter, it shall be Friends' responsibility to employ, or not employ, these or any other persons as Friends deems fit. Any such employees shall be the sole employees of Friends, and shall not be subject to the City's personnel policies, rules, or merit protections. Friends shall be responsible for paying any such employees wages and salaries, benefits, and associated payroll costs as required by law.

4. Friends shall accept all of the dogs and cats that are delivered to the facility by City staff and residents unless prohibited by a licensed veterinarian. The Friends further agrees to manage and dispose of all animals that are accepted at the Animal Shelter in accordance with all applicable laws, rules, and regulations of the City of Bisbee, the State of Arizona, and of the United States, and to operate this facility in accordance with all applicable laws, rules, and regulations including specifically the provisions of A.R.S. § 11-1021 through § 11-1029 and Article 6 of the City Code. It is understood and agreed that Friends shall be responsible for paying the costs of sterilizing, euthanizing, and disposing of any animals that are in the custody of the Animal Shelter.

5. Friends shall provide the City with a monthly accounting of all animals accepted, adopted, disposed of, the monies it has accepted and paid related to the animals, and shall report on all other items that impact these figures. Such monthly accounting shall be due no later than the 15th day of the following month.

6. Friends shall permit City staff immediate access to the Animal Shelter upon request for purposes of inspection of the operations and the facility.

7. Friends shall maintain insurance as follows: (a) General commercial liability and property damage insurance on which policy the City is named as an additional insured on the policy; except as may be required by statute, the liability insurance referred to above shall provide, as a minimum, liability coverage for not less than two million dollars (\$2,000,000) combined single limit; (b) automobile liability at Arizona State limits or higher that covers the one vehicle provided by the City; (c) workers compensation insurance and unemployment insurance as required by the state of Arizona.. The City shall maintain property and casualty insurance for the general premises..

8. In consideration of this Agreement, and the responsibilities and obligations assumed by Friends in operating the Animal Shelter, the City will pay Friends a total amount of \$35,000, plus the remainder of the Ryan Miele Grant payable in two (2) equal installments as follows: January 1 and April 1, 2017. In further consideration, Friends is entitled to collect and retain any adoption, impoundment, and any other fees that are paid directly to them. Friends shall maintain a record of all such payments and issue receipts for all such payments.

9. Friends agrees and warrants that the amounts received pursuant to the preceding paragraph, together with any donations or other funds it receives, will be sufficient to operate the Animal Shelter in the manner required by this Agreement and by law. It is expressly understood that the City shall have no obligation to cover any shortfalls incurred by Friends in operating the Animal Shelter.

10. The Friends shall maintain the facility in good and safe condition and shall surrender the same, at termination of this Agreement, in as good condition as received, normal wear and tear excepted. The Friends are responsible for all costs necessary to repair the facility as a result of any vandalism or destruction caused by the Friends or any of its employees or agents. The City will resume responsibility for any major repairs and improvements that may be required to include acts of God.

11. This Agreement shall become effective upon January 1, 2017, continuing through June 30, 2017, unless terminated earlier as provided herein.

12. This Agreement may be terminated by either party for cause based on a material breach of the terms of this Agreement, provided that the party claiming material breach shall provide the other party with written notice of such breach and ten (10) days to cure. Further, either party may terminate this agreement for any reason by giving the other party thirty (30) days notice.

13. This Agreement may be cancelled as provided in A.R.S. § 38-511, pursuant to the terms of that statute.

14. Each party may at any time request an amendment to this Agreement. This Agreement is subject to amendment upon the mutual consent of the respective parties by the mutual approval of a formal written amendment to this Agreement.

15. Both parties shall defend, hold harmless, and indemnify the other party, its officers, agents, and employees, from all claims, demands, suits, damages or loss ("claims") that result from the negligence or intentional torts of the party or other party, its agents, officers and employees, in the performance of this Agreement, but only to the extent that such claims arise from such negligence or intentional torts. The extent of the foregoing liabilities shall be limited to and determined by the respective fault of the parties, their agents, officers and employees, in comparison with others (including, but not limited to, the other party) who may have contributed to or in part caused any such claim to arise. This duty to defend, indemnify, and hold harmless is not negated or otherwise limited by the characterization of the underlying duty as a "non-delegable duty" for which either party may be vicariously liable, as a matter of law, and does not expire.

16. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

17. It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint ventures, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

18. In accordance with A.R.S. § 35-393.01, the parties certify that they are not currently engaged in, and for the duration of this Agreement agree not to engage in, a boycott of Israel, and will not adopt a procurement, investment, or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

19. The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

20. The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

21. Notwithstanding any other provision of the agreement, the parties understand that the City of Bisbee is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 *et. seq.*

22. Friends may not assign this Agreement to another party.

23. This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.

IN WITNESS WHEREOF, the Parties have authorized the designated officials indicated below to execute this agreement indicating their respective approval.

CITY OF BISBEE:



DAVID M. SMITH
Mayor

12/21/16

Date

FRIENDS OF BISBEE ANIMAL SHELTER:




KELLY GALLIGAN
President

12-22-16

Date

ATTEST:




ASHLEE CORONADO
Clerk, City of Bisbee

12/21/16

Date

APPROVED AS TO FORM:



LAURI J. OWEN
City Attorney, City of Bisbee

Digitally signed by Lauri J Owen
Date: 2016.12.13 08:45:31 -0700

Date