**CITY OF PALM COAST AGREEMENT**

**WITH FLAGLER HUMANE SOCIETY, INC.**

**RELATING TO ANIMAL SHELTER SERVICES**

**THIS AGREEMENT** (“Agreement”) made and entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016 (“Effective Date”), by and between the:

**City of Palm Coast, Florida**

**160 Lake Avenue, Palm Coast, Florida 32164**

a municipal corporation of the State of Florida, hereinafter referred to as the “City”, and:

**Flagler Humane Society, Inc.**

**1 Shelter Drive**

**Palm Coast, FL 32137**

a Florida non-profit corporation, authorized to do business in the State of Florida, hereinafter referred to as the “Society.” The City and Society are collectively referred to herein as the “parties.”

**WHEREAS**, the City desires to retain the Society to provide animal shelter services for the City and to receive and care for animals impounded pursuant to City Code for a certain agreed upon consideration; and

**WHEREAS**, the City desires to retain the Society for the performance of services necessary to support the City’s animal control activities and programs upon the terms and conditions hereinafter set forth, and the Society is desirous of performing and providing such services; and

**WHEREAS**, the City desires to use the expertise and knowledge of the Society; and

**WHEREAS**, the Society recognizes the importance to the public of strict adherence to the laws, rules, and regulations of the City and State of Florida; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the parties hereto as follows:

1. **TERM OF AGREEMENT.**

This Agreement shall commence on the Effective Date and shall continue through September 30, 2017.

1. **SERVICES.**
2. The Society shall maintain and operate an animal shelter in a manner adequate for the confinement, housing and disposal of animals at 1 Shelter Drive, Palm Coast, Florida 32137 (“Shelter”). The Society shall provide means to receive and house animals brought to the Shelter by the City’s Police, Animal Control Officers, or other designated officers appointed by the City for this purpose. In cases where livestock or other animals are received by the City, the City will try to alternatively place the animals in a suitable boarding facility equipped to house such animals. If alternative placement is unable to be found the Society shall work in cooperation with the appropriate agencies to assist in providing appropriate shelter and care. The Society shall provide all services, as further described herein, associated with animal sheltering and disposition, in accordance with all federal, state, and local laws, rules, ordinances, statutes, and regulations.

The City shall provide the Society, upon dropping off animals, with documentation including the location where the animals were picked up, description of animal, and any available information regarding the disposition of the animal, etc. Documentation will be signed by an Animal Control Officer or agent and a Society employee or agent.

1. Hours of Operation. The Shelter will be open to the public from 10 a.m. to 5 p.m. Monday through Saturday and 11 a.m. to 4 p.m. Sundays. The Society will have staff available from 8 a.m. to 5 p.m. 7 days a week excluding legal holidays observed by the Society. Staff will be available from 8 a.m. to 12 p.m. on holidays.
2. The Society shall provide the City’s designated Animal Control Officers, City employees or designated contractors with access to the Shelter on a 24 hour, seven (7) day per week basis, including access to designated crates and supplies to safely crate animals overnight. The Society shall supply such designated City employees and agents with keys or codes for access. The Society shall provide contact information for night emergency duty staff. If a live animal is to be dropped off, Society staff may meet City representatives at the Shelter. In the event Society staff is required to provide emergency after-hour services, an emergency call fee of $25.00 shall apply. The Animal Control Officer on duty will notify Society staff of the animal’s location and pertinent information via e-mail immediately.
3. The Society shall supply, feed, house, care, and dispose of all animals received at the Shelter in accordance with all federal and state laws and the City Code of Ordinances, as amended from time to time. Specifically, the Society shall:
   1. Provide space for the isolated confinement, observation and care of any stray animal suspected of rabies, or any stray animal which has bitten or otherwise exposed any person to rabies, and will accept, care for and dispose of such animal delivered to the Shelter and will cause to have removed and make available to the Flagler County Health Department for laboratory examination of the head of any such animal which becomes ill or dies while under confinement for such reasons. No animal shall be released from confinement or quarantine without prior approval of the City.
   2. Accept confiscated animals as strays or accept said animals as “confiscated” pursuant to Chapter 828, Florida Statutes, only when the provisions of Section 828.073, F.S. are satisfied (i.e. petition the Court for a hearing). The appropriate paper work shall be submitted by the seizing agent to the Society within three (3) business days of impoundment of the confiscated animal. No animal confiscated pursuant to Section 828.073, F.S., shall be released from impoundment without prior approval of the City.
   3. Accept confiscated animals whose owners are in police custody, deceased, or hospitalized. No animal, whose owners are in police custody for charges related to animal cruelty involving said animal, shall be released from impoundment without prior approval of the City.
   4. Comply with Part II “Dangerous Dogs”, Chapter 767, F.S. It shall be the sole responsibility of the City’s Animal Control Authority to determine whether a dog is dangerous and to submit to the Society the necessary paperwork described in the applicable statutes. If quarantine is necessary, the dog may be quarantined for ten (10) business days at a bona fide boarding kennel or veterinarian’s office of the seizing agent’s or owner’s choice. Otherwise, the Society shall quarantine all dogs that are the subject of a dangerous dog investigation, or classified as dangerous in accordance with Part II, Chapter 767, F.S. If an owner files a written appeal pursuant to Part II, Chapter 767, F.S., the dog must be held and may not be destroyed while the appeal is pending. No animal shall be released from quarantine without prior approval of the City.
   5. Be responsible for the return of impounded animals to the proper owner and custodian thereof pursuant to the provisions of state law and Chapter 8, City Code of Ordinances.
   6. Place received animals for adoption or euthanize animals not claimed or redeemed within the time set forth and in compliance with the provisions of state law, and Chapter 8, City Code of Ordinances. The Society agrees to euthanize said animals, utilizing trained personnel, by use of humane means that are in compliance with Section 828.058, F.S. The Society shall supply all drugs authorized by Florida law for the euthanasia of animals covered under this Agreement. No live animal shall be used, sold, or donated for experimental purposes.
   7. Furnish, at its sole expense, all supervision, labor, animal food, tools, supplies, and other items necessary for the satisfactory performance of services herein related.
4. Veterinary Care. The Society shall not be responsible for veterinary care, except in the event an animal is injured or contracts a communicable disease while in the custody of the Society. Prior to delivering any animal to the Society, the City shall be responsible for any necessary medical or hygienic care. Specifically, the City will take animal(s) to a licensed veterinarian if in need of medical care or to a licensed groomer if in need of grooming due to neglect prior to the Society receiving the animal.
5. The Society’s Administrator or Director shall have decision-making power on a regular full-time basis. Such Administrator/Director shall have full operational control and be responsible for day-to-day operations. Such Administrator/Director shall be the liaison between the Society and the City’s designated Animal Control Administrators and Animal Control Officers.
6. The Society shall be responsible for all water and sewer utility, electric utility and garbage service to the Shelter, including the disposal of dead animals brought to the Shelter by the City’s designated Animal Control Officers.
7. The Society shall cooperate with City officials, the City’s designated Animal Control Officers, law enforcement and the Flagler County Health Department on actions pertaining to animals and quarantine, in accordance with all federal, state, and local laws, rules, ordinances, and regulations.
8. The City shall obtain and preserve evidence for a civil or criminal prosecution of all violations of any ordinance, code, regulation or law pertaining to animal control prior to the Society receiving the animal. The Society will assist the City Attorney and the City’s designated Animal Control Officers and law enforcement in obtaining, preserving and presenting evidence, after the animal has been received at the Shelter, in the civil or criminal prosecution of all violations of any ordinance, code, regulation or law pertaining to animal control, including licensing and registration.
9. The Society will utilize a tracking system to provide the City with any calls or complaints received through the Society.
10. Licensing. Prior to releasing any animals, with current Rabies vaccinations, to the owners, Society shall issue all necessary licenses for the animals and collect the associated fee, based on the fee currently in effect in the City.

Spayed/Neutered $5.00 license

Not spayed/neutered $10.00 license

City may also issue licenses, and when the City issues the licenses, the Society shall not

be entitled to the license fee.

1. **BILLING AND PAYMENT.**
2. The Society shall invoice the City pursuant to subsection (c)(2), as applicable for each dog or cat, domesticated animal, injured animal, deceased animal, livestock animal, wild animal, or quarantined/confiscated animal delivered to the Shelter by either the City or a private citizen.
3. In consideration of the agreements and undertakings to be performed by the Society, the City agrees to pay the following applicable fee(s) per animal to the Society on a monthly basis, in arrears:

|  |  |
| --- | --- |
| **SERVICE** | **FEE** |
| Animal Intake (dog or cat – 5 days intake period) | $75 (per animal) |
| Deceased On Arrival | $15 (per animal) |
| Animals held pending disposition from a hearing or for evidence in another proceeding | $30 per day after initial 5 day animal intake period |
| Quarantine (Rabies or Dangerous Dog up to 10 days) | $200 (per animal)  $30 per day after initial 10 day quarantine |
| If decapitation necessary | $200 (per animal) |
| Wildlife and Pocket Pet Animals | $20 (per animal) |
| Livestock | $50 (per animal) |
| Cats picked up and returned to the complainant’s residence (includes sterilization, rabies vaccination and ear notched) | $31 (per cat) |

1. Payments must be made to the Society within forty-five (45) days of the date of a proper invoice, as required by the Florida local Government Prompt Payment Act (Part VII, Chapter 218, Florida Statutes) (the “Prompt Payment Act”). As provided by the Prompt Payment Act, any payment that is not made by the City within such time period shall bear interest from thirty (30) days after the due date at a rate of one percent (1%) per month on the unpaid balance until paid in full. If the City has a dispute about a charge on its invoice, it must contact the Society’s Amy Carotenuta at 386-445-1814 within fifteen (15) days of the date of the invoice.
2. In the event an owner pays any quarantine fees, or impoundment fees related to confiscated animals to reclaim its animal, the City shall be credited to the extent any such fees are paid.
3. **ACCOUNTABILITY.**
4. The Society shall submit to the City, through the Community Development Department, Code Enforcement Division, reports reflecting the number of animals received from the City, the source, the disposition and a brief narrative highlighting the month’s activities, no later than the 10th of each month during the term of this Agreement. The Society shall submit to both regular and random performance and financial audits by the City regarding this Agreement. Reports of such audits shall be made public, and may have a bearing upon continuation and/or extension of the term. The City shall retain the right to inspect all records and to investigate any matter involving the care of animals or any matter arising under the terms of this Agreement.

1. The Society shall make available for City inspection at any reasonable time all records and reports relating to any duty or obligation arising under the terms of this Agreement. All such reports shall remain the property of the City. Those records and reports, which are public records, shall be made available to members of the public upon request to the City in accordance with Section E of this Agreement and the laws of the State of Florida.
2. If requested by City Council, or its designee, the Society shall arrange to have the Shelter inspected by a veterinarian licensed to practice in the State of Florida and shall file a report of such inspection, signed and dated by the inspecting veterinarian.
3. The Society agrees that the City Manager shall have access to the Shelter during normal business hours in order to verify compliance with the terms of this Agreement.
4. **Public Records.** 
   1. The parties specifically acknowledge that this Agreement is subject to the laws of the state of Florida, including without limitation Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the parties. If the Society is either a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, or an “agency” as defined in Section 119.011(2), Florida Statutes, the Society shall:
      1. Keep and maintain all public records required by the City to perform the services herein; and
      2. Upon request from the City’s custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S. or as otherwise provided by law; and
      3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement Term and following completion of the Agreement if the Society does not transfer the records to the City; and
      4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Society or keep and maintain public records required by the City to perform the services herein. If the Society transfers all public records to the City upon completion of the Agreement, the Society shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Society keeps and maintains public records upon completion of the Agreement, the Society shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City’s custodian of public records, in a format compatible with the information technology systems of the City.
   2. All requests to inspect or copy public records relating to the Agreement shall be made directly to the City. Notwithstanding any other provision of this Agreement to the contrary, failure to comply with the requirements of this paragraph shall result in the immediate termination of the Agreement, without penalty to the City. A contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties pursuant to Section 119.10, F.S. Further, the Society shall fully indemnify and hold harmless the City, its officers, agents and employees from any liability and/or damages, including attorney’s fees through any appeals, resulting from the Society’s failure to comply with these requirements.
   3. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY’S CUSTODIAN OF PUBLIC RECORDS, ATTN: VIRGINIA SMITH, CITY CLERK, AT 386-986-3713, vsmith@palmcoastgov.com, 160 LAKE AVENUE, PALM COAST, FLORIDA 32164.
5. **EXTENT OF AGREEMENT / AMENDMENT / SEVERABILITY.**
6. This Agreement, together with any exhibits, constitutes the entire Agreement between the City and the Society and supersedes all prior written agreements or oral understands in connection herewith.
7. If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to personas or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law when consistent with equity and the public interest.
8. All provisions of this Agreement shall be read and applied in pari materia with all other provisions hereof.
9. Any material violation of this Agreement by a party is recognized by the parties to constitute irreparable harm to the other. In the event of any such material violation, the aggrieved party shall be entitled to any and all remedies available at law or equity, including by not limited to injunctive relief.
10. Any alteration, amendments, deletions or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.
11. Neither party shall assign any or all of its benefits or executory obligations under this Agreement without the approval of the other party.
12. **CONTROLLING LAWS / VENUE / INTERPRETATION.**
13. This Agreement is to be governed by the laws of the State of Florida.
14. Venue for any legal proceeding related to this Agreement shall be in the Seventh Judicial Circuit Court in and for Flagler County, Florida.
15. This Agreement is the result of *bona fide* arms length negotiations between the City and the Society and all parties have contributed substantially and materially to the preparation of the Contract. Accordingly, this Agreement shall not be construed or interpreted more strictly against any one party than against any other party.
16. This Agreement represents the entire and integrated agreement between the City and the Society, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instruments signed by both the City and the Society, and is subject to such reasonable modifications as may be required by the City’s insurer(s), if any.
17. **INDEMNITY.**

1. To the fullest extent permitted by law, the Society shall indemnify, hold harmless, and defend the City, its agents, servants, officers, officials, and employees, or any of them, from and against any and all claims, damages, losses, and expenses, including, but not limited to, attorneys fees and other legal costs, such as those for paralegal, investigative, and legal support services, and the actual costs incurred for expert witness testimony arising out of or resulting from the performance or provision of services required under this Agreement, provided that same is caused in whole or part by the error, omission, negligent act, failure to act, malfeasance, misfeasance, conduct, or misconduct of the Society, its agents, servants, officers, officials, employees, or subcontractors.

2. Nothing herein shall be deemed to affect the rights, privileges, and immunities of the City as set forth in Section 768.28, Florida Statutes.

3. In claims against any person or entity indemnified under this Section by an employee of the Society or its agents or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Society or its agents or subcontractors, under Workers Compensation acts, disability benefits acts, or other employee benefit acts.

4. The execution of this Agreement by the Society shall obligate the Society to comply with the indemnification provision in this Agreement; however, the Society must also comply with the provisions of this Agreement relating to insurance coverages.

1. **INSURANCE / SURETY OBLIGATIONS.**
2. The Society shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies with a Best Rating of A – or better, authorized to do business in the State of Florida and in a form acceptable to the City, and with only such terms and conditions as may be acceptable to the City.
3. Workers Compensation / Employer Liability: The Society shall provide Workers Compensation insurance for all employees engaged in work under this Agreement in accordance with the laws of the State of Florida. Employers’ Liability Insurance at limits not less than the following:

a. $500,000 Each Accident

b. $500,000 Disease Each Employee

c. $500,000 Disease Aggregate

1. Comprehensive General Liability: The Society shall provide coverage for all operations including, but not limited to, contractual, independent contractor, products, and complete operations and personal injury with limits not less than the following:

a. $1,000,000 Bodily Injury & Property Damage – each occurrence

b. $1,000,000 Personal & Advertising Injury – each occurrence

c. $1,000,000 General Aggregate

d. $1,000,000 Products/Completed Operations Aggregates limit

e. $5,000 Medical Payments

f. $100,000 Fire Damage Legal Liability

1. Comprehensive Business Automobile Liability: The Society shall provide complete coverage with a combined single limit of not less than $300,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased, or hired vehicles.
2. All insurance other than Workers Compensation and Professional Liability that must be maintained by the Society shall specifically include the City as an additional insured. All insurance minimum coverages shall extend to any subcontractor, and the Society shall be responsible for all subcontractors. The Society shall ensure that the City is named as an insured party in each pertinent insurance policy.
3. The Society shall provide Certificates of Insurance to the City evidencing that all such insurance is in effect prior to any work being performed by the Society under this Agreement. These Certificates of Insurance shall become part of this Agreement. Neither approval by the City nor failure to disapprove the insurance furnished by the Society shall relieve the Society of the Society’s full responsibility for performance of any obligation including the Society’s indemnification of the City under this Agreement. If, during the periods which an insurance company is providing the insurance overage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, *Florida Statutes*, or (3) fail to maintain the requisite Best’s Rating and Financial Size Category, the Society shall, as soon as the Society has knowledge of any such circumstance, immediately notify the City and immediately replace the insurance coverage provided by the insurance company with a difference insurance company meeting the requirements of this Agreement. Until the Society has replaced the unacceptable insurer with an insurer acceptable to the City, the Society shall be deemed to be in default of this Agreement.
4. The insurance coverage shall contain a provision that requires that prior to any changes in the coverage, except increases in aggregate coverage, thirty (30) days prior notice will be given to the City by submission of a new Certificate of Insurance and appropriate policy modifications.
5. The Society shall provide Certificates of Insurance directly to the City’s Designated Representative. The certificates shall clearly indicate that the Society has obtained insurance of the type, amount, and classification required by this Agreement.
6. Nothing in this Agreement or an action relating to this Agreement shall be construed as the City’s waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.
7. All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the City.
8. The provision of insurance coverage shall not in any way cause the Society’s indemnification of the City to be reduced in any way or in any respect.
9. **EQUAL OPPORTUNITY EMPLOYMENT / NON-DISCRIMINATION.**

The Society agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer: recruitment advertising; layoff or termination; rates of pay or forms of compensation; and selection for training, including apprenticeship. The Society, moreover, shall comply with all the requirements as imposed by the American with Disability Act, the regulations of the Federal government issued thereunder, and any and all requirements of federal or state law related thereto.

1. **TERMINATION.**

Either party may terminate this Agreement, with or without cause, by giving not less than ninety (90) days written notice to the other.

1. **GENERAL.**
2. The parties intend that an independent contractor relationship between the Society and the City will be created by this Agreement. No agent, employee, or representative of the society shall be deemed an employee, agent, servant or representative of the City for any purpose; and the employees of the Society are not entitled to any of the benefits the City provided for City employees.
3. The Society will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Agreement.
4. The Society is responsible for all taxes applicable to this Agreement.
5. The Society is not an agent of the City and does not have the authority to bind the City to any fiscal or contractual obligation.
6. The City shall not be obligated or liable under the terms of this Agreement to any party other than the Society. There are no third party beneficiaries to this Agreement.
7. **NOTICES.**
8. Whenever either party desire to give notice unto the other, it must be given by written notice, sent by certified United States mail, or hand delivered, addressed to the party for whom notice is intended, at the place specified herein.
9. For the present, the parties designate the following as the representative placed for giving notice:

a. For the City: With a copy to:

City Manager Code Enforcement

City of Palm Coast City of Palm Coast

160 Lake Avenue 160 Lake Avenue

Palm Coast, Florida 32164 Palm Coast, Florida 32164

b. For the Society: With a copy to:

President Director

Flagler Humane Society Flagler Humane Society

1 Shelter Drive 1 Shelter Drive

Palm Coast, Florida 32137 Palm Coast, Florida 32137

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the respective dates written below each signature.

*ATTEST:* **CITY OF PALM COAST**

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Virginia A. Smith, City Clerk Jim Landon, City Manager

Approved as to form and legality: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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William E. Reischmann, Jr., Esq.

*WITNESSES:* **FLAGLER HUMANE SOCIETY, INC.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature **By: Its’ President**

Print Name**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approved by (Signature and date):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_/\_\_\_ Responsible Department Director

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_/\_\_\_ City Finance

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/\_\_\_/\_\_\_ PCMD