

INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF ORO VALLEY

This Intergovernmental Agreement (“Agreement”) is entered into between the Town of Oro Valley, a municipal corporation, hereinafter referred to as “TOWN”, and Pima County, a political subdivision of the State of Arizona, hereinafter referred to as “COUNTY”.

I. RECITALS

WHEREAS, the Town Council of the TOWN desires to enter into an Agreement with COUNTY for the provision of animal control services relating to enforcement of leash law ordinances, biting dog ordinances, animal cruelty ordinances and to provide for the impoundment and sheltering of stray animals; and

WHEREAS, the COUNTY has trained personnel capable of enforcing the TOWN Animal Control Ordinances and has facilities for the impoundment and sheltering of stray animals; and

WHEREAS, the COUNTY is engaged in certain activities relating to the operation of a COUNTY pound, vaccination and rabies control, stray animal impoundment, including an Animal Care Center, and is therefore presently able to provide assistance and services to the TOWN for animal control purposes; and

WHEREAS, in accordance with A.R.S. §11-951 et. seq., the TOWN and COUNTY are authorized to enter into this Intergovernmental Agreement.

NOW, THEREFORE, the TOWN and COUNTY agree as follows:

II. PARTIES’ OBLIGATIONS

1. The County Enforcement Agent, herein designated by COUNTY to be Pima Animal Care Center, and all employees thereunder, shall be referred to herein as “Town Enforcement Agents.”
2. The Town Enforcement Agents shall administer and enforce the provisions of the Oro Valley Animal Control Code, applicable state laws and all services related thereunder, including such amendments to said laws as may be passed from time to time.
3. For the purpose of this Agreement, that certain Ordinance known as the Town of Oro Valley Animal Control Ordinance is hereby adopted and made a part of this Agreement by reference as if specifically set forth herein.
4. The Town Enforcement Agents shall be granted those limited police powers necessary to carry out duties imposed by this Agreement, together with any powers necessary for such agents to engage in the vaccination, licensing and other activities arising from their duties as Town Enforcement Agents.
5. The services performed under this Agreement shall be carried out in accordance with Pima Animal Care Center Policies and Procedures, and the desires of the COUNTY and TOWN as such desires may be expressed from time to time by the Pima County Board of Supervisors or the Town

Council of Oro Valley. Such scope of service level requirements shall be revised, if necessary, in accordance with availability of funds allocated for animal control purposes by the TOWN. Any such revision shall be in the form of a written amendment to this Agreement.

6. The TOWN Prosecutor shall prosecute all criminal matters and the Oro Valley Magistrate Court shall handle criminal and civil matters arising out of the enforcement of the Oro Valley Animal Control Code, as amended, pursuant to this Agreement. All fines collected by the Oro Valley Magistrate Court as a result of the enforcement of the Oro Valley Animal Control Code, shall be the property of the TOWN, and the TOWN shall be entitled to use the funds for its purposes.

7. The Town Enforcement Agents, acting under this Agreement within the jurisdictional limits of the TOWN, shall collect animal licensing and kennel fees and such fees as may be required under the Oro Valley Animal Control Code and/or state statutes, including but not limited to A.R.S. § 11-1011. Said funds are to be credited to the TOWN for costs incurred pursuant to this Agreement.

8. The TOWN'S expenses for licensing, kennels, enforcement and education shall be allocated by the year-to-date ratio of licenses processed, animals handled, enforcement calls completed, and events held for the jurisdiction, to the total mentioned services processed by COUNTY. The administrative expenses shall be allocated based on the average ratios of the year-to-date percentages of the total licensing, kennels and enforcement expenses of COUNTY. The TOWN'S expenses for the Spay/Neuter program will be allocated based on a fixed per capita percentage by jurisdiction.

9. The TOWN shall be extended cooperation and access to documents relating to the Pima Animal Care Center's operations in TOWN.

10. Persons employed by the COUNTY in performance of services and functions pursuant to this Agreement shall have no claim to pension, civil service or other employees' rights granted by the TOWN to its officers and employees.

11. The Parties stipulate and agree that COUNTY is not an employee of the TOWN, and is performing its duties hereunder as an independent contractor, supplying its own employees, and maintaining its own insurance, worker's compensation and internal accounting. The TOWN in no way controls, directs or supervises the actions of the COUNTY under this Agreement.

12. The cost of services charged to TOWN by COUNTY under this Agreement shall include those costs associated with the use and access to certain departments within the COUNTY by the Town Enforcement Agents, which use and access is necessary for the performance of services and functions pursuant to this Agreement.

13. All payments received from constituents on behalf of the TOWN will be deposited daily with the Pima County Treasurer's Office into a Fiduciary Agency Account and will instruct the Pima County Treasurer's Office to remit to TOWN all revenues collected on behalf of the TOWN on a monthly basis. Any interest earned on the Account shall be credited to the TOWN. The COUNTY will bill the TOWN monthly for actual costs incurred on behalf of the TOWN. Payments is due within thirty (30) days of invoice date. Interest at the rate of 10% per annum will accrue on any outstanding invoice(s) greater than 30 days. Monthly billing information will include the following:

- a. By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.
- b. By jurisdiction, the number and types of dog licenses issued, the number of calls that resulted in a response from the Pima Animal Care Center, the number of animals processed at the shelter, the number of school presentations provided within the TOWN, and the number of school children within the TOWN attending the presentations.
- c. The total Pima County Animal Care adopted budget, including operating revenues by revenue source and operating expense by type of expense.
- d. The total Spay/Neuter period-end expenses with the allocation based on a fixed per capita percentage.
- e. The projected year-end balance for the Pima County Rabies Control Fund, including any projected surplus or deficit for the TOWN.

14. Address Audit. The COUNTY will perform an address audit to verify jurisdictional information, at least quarterly. Any adjustments resulting from the audit will be processed as needed. If the outcome results in additional:

- a. Funds being due to TOWN, the COUNTY shall notify the TOWN in writing and shall remit the additional funds to the TOWN within thirty (30) days following the end of the quarter.
- b. Expenditures for the TOWN, an invoice will be submitted to the TOWN due and payable to the COUNTY within thirty (30) days from the date of invoice.

15. COUNTY will also provide TOWN with a final billing, reconciliation and Financial Report for the Pima County Rabies Control Fund on or before September 30 for each fiscal year covered by this Agreement. This report shall contain the same information enumerated in paragraph 13 of this Agreement.

16. If TOWN expenses exceed TOWN revenues for a given period, TOWN shall remit payment in the amount of the revenue deficit to COUNTY for deposit in the Pima County Rabies Control Fund within thirty (30) days after TOWN's receipt of COUNTY's invoice, billing, and Financial Report, as described in paragraphs 13-15 above of this Agreement. Interest at the rate of 10% per annum, as stated by A.R.S. § 44-1201 shall accrue on any balance outstanding 30 days from the date the official request for funds is received by the TOWN, unless the TOWN submits a written notice to COUNTY disputing the amount due within fifteen (15) days after TOWN's receipt of COUNTY's period reconciliation and Financial Report. Upon receipt of the TOWN's written notice, the COUNTY and the TOWN shall work cooperatively to reach prompt resolution of the dispute.

17. If TOWN revenues collected exceed TOWN expenses for a given fiscal year, the COUNTY shall remit the excess funds to TOWN.

III. DURATION AND EFFECTIVE DATE

The term of this Agreement shall become effective July 1, 2014 and shall continue until June 30, 2016. The Parties shall have the option of extending this Agreement for up to three (3) additional

one (1) year periods or any portion thereof. Any modification, termination, or extension shall be made by formal written amendment executed by the Parties.

IV. WORKERS' COMPENSATION

Each Party shall comply with the notice provisions of A.R.S. § 23-1022(E), advising employees who provide services pursuant to this Agreement that they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

V. INDEMNIFICATION

Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other Party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

VI. NON-DISCRIMINATION

The Parties agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 **including flow down of all provisions and requirements to any subcontractors.** Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

VII. AMERICANS WITH DISABILITIES ACT

The Parties shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

VIII. APPLICABLE LAW

This Agreement and all obligations upon the COUNTY or TOWN arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulation. The Parties hereto shall comply with all applicable federal, state and local statutes, ordinances, regulations, rules, standards and executive orders.

IX. TERMINATION

This Agreement may be terminated by either Party, with or without cause, upon sixty (60) days written notice. Upon termination, a final statement shall be sent to the TOWN by the Pima County Animal Care Center. Within thirty (30) days of receipt thereof, the TOWN shall tender payment of any deficit or the Pima County Animal Care Center shall tender payment of any surplus.

X. ASSIGNMENT

Any assignment or attempted assignment of this Agreement by either Party without the prior written consent of the other Party shall be void.

XI. NON-WAIVER

The failure of either Party to insist upon the complete performance of any of the terms and provisions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, shall not constitute a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time shall not constitute an accord and satisfaction.

XII. CONFLICT OF INTEREST

This Agreement is subject to the provisions of A.R.S § 38-511.

XIII. NON-APPROPRIATION

Notwithstanding any other provisions in this Agreement, this Agreement may be terminated with or without sixty (60) days notice if the Pima County Board of Supervisors or the TOWN does not appropriate sufficient funds for the purpose of maintaining this Agreement.

XIV. NON-WARRANTY

The Parties do not warrant their respective right or power to enter into this Agreement and if the same is declared null and void by court action initiated by third persons, there shall be no liability to the other Party by reason of such action or by reason of the Agreement.

XV. NOTICES

Any notice required or permitted to be given under this Agreement shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

COUNTY
Director
Pima County Health Department
3950 S. Country Club, Ste. 100
Tucson, AZ 85714

TOWN OF ORO VALLEY
Mayor
Town of Oro Valley
11000 N. La Canada Drive
Oro Valley, AZ 85737
(520) 229-4700

XVI. LEGAL ARIZONA WORKERS ACT COMPLIANCE

1. TOWN hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to TOWN'S employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). TOWN shall further ensure that each subcontractor who performs any work for TOWN under this Contract likewise complies with the State and Federal Immigration Laws.

2. COUNTY shall have the right at any time to inspect the books and records of TOWN and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

3. Any breach of TOWN'S 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 Contract subjecting TOWN to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, TOWN 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, as soon as possible so as not to delay project completion.

4. TOWN shall advise each subcontractor of COUNTY'S rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form:

"SUBCONTRACTOR hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to SUBCONTRACTOR'S employees, and with the requirements of A.R.S. § 23-214 (A). SUBCONTRACTOR further agrees that COUNTY 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 Contract subjecting SUBCONTRACTOR to penalties up to and including suspension or termination of this contract."

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