

City of South Daytona

Office of the City Manager / Department of Police

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SOUTH DAYTONA POLICE DEPARTMENT MEMORANDUM

AGENDA ITEM

D14 DATE 9/29/2020

TO: James L. Gillis, Jr., City Manager

FROM: Mark J. Cheatham, Chief of Police 

DATE: August 27, 2020

SUBJECT: Halifax Humane Society Contract

Attached is the 2020 – 2021 Animal Sheltering Services contract for the Halifax Humane Society. The services provided by the Humane Society affords the City of South Daytona with the opportunity to keep stray cats and dogs off the City streets and to provide a place of disposition for wild and dangerous animals. This is a valued service the City presently utilizes and currently, is the most cost effective and legal process to all cities in Volusia County.

It should be noted that at this time, due to the size of our City and financial status, entertaining the notion of starting our own animal services program, similar to the Humane Society's services, would be too costly. Additionally, the current contract rates offered by the shelter are the same as the 2019 – 2020 year.

I recommend we continue with the services and programs Halifax Humane Society provides to our City.

AGREEMENT FOR SERVICES BETWEEN
Halifax Humane Society, Inc.
AND
The City of South Daytona

This Services Agreement ("Agreement") is hereby entered into by and between the **Halifax Humane Society, Inc.**, a Florida non-profit corporation, with its principal address at 2364 West LPGA Boulevard, Daytona Beach, Florida 32124 ("**Humane Society**"), and the **City of South Daytona**, a Florida municipal corporation.

WHEREAS, in order to enforce the ordinances of the City of South Daytona and the laws of the State of Florida with respect to stray animals, the City of South Daytona desires to deliver stray animals to the Humane Society for the humane impoundment and humane disposition of said animals; and

WHEREAS, the Humane Society is organized for the purpose, among others, of preventing cruelty to animals and is interested in assuring that impounded animals are sheltered in a humane manner and those which must be destroyed, be so destroyed in a humane manner.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and provisions herein contained, it is expressly agreed and understood as follows:

1. **TERM:** This Agreement will take effect on the 1st day of October 2020, and will remain in full force and effect for an initial twelve (12) month period ending on midnight between September 30, 2021 and October 1, 2021. The parties shall have the option to extend the contract or enter into contract negotiations if they so desire.
2. **ANIMAL SHELTER:**
 - (a) The Humane Society will maintain and operate an animal shelter ("Shelter") in a manner adequate for the confinement, remedial treatment, and, if necessary, disposal of stray dogs, cats, or other animals, which may be delivered to the Humane Society from all areas within the City of South Daytona, and the Humane Society will furnish, at its sole expense, all supervision, labor, animal food, tools, supplies and other things necessary for the satisfactory performance of the services herein agreed to be provided. Remedial care will be provided for injured animals during operating hours when there is a staff veterinarian available, at the Humane Society's sole expense. The Shelter will be operated at 2364 LPGA Blvd., Daytona Beach, Florida.
 - (b) The Humane Society will provide means to accept all stray dogs and other domesticated animals delivered to the Shelter by the City of South Daytona's law enforcement personnel, Animal Control Officers, or other designated officers appointed by the City of South Daytona for this purpose. The Humane Society will provide alternative options of Return to Field (RTF) for unsterilized community cats

following national animal welfare organization recommendations for the most humane practices with addressing cat overpopulation. The Humane Society will accept wild animals and livestock only if it has the ability and facilities to impound and control these animals, and the decision to accept or reject such animals will be solely within the discretion of the Humane Society. The Humane Society will require all persons who drop off or report injured or stray animals to the Shelter during the Shelter's normal operating hours to give their names and current home and post office addresses and identify the place where the animals involved were located or picked up.

- (c) When the City of South Daytona delivers an animal to the Shelter for impoundment and such animal bears information indicating ownership of the animal, the Humane Society, within one (1) working day after receipt of such animal, will use its best efforts to notify the owner thereof and inform the owner of the procedure whereby the owner can recover the animal. Regardless of the foregoing, any animal suspected of being infected with rabies or which has bitten or otherwise exposed any person to rabies, shall not be released to its owner until after such animal has been impounded for a period of ten (10) days and the Volusia County Health Department, through its authorized representatives, has expressly approved, in writing, any such release. When a stray dog is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will impound the animal at the City of South Daytona's expense for a period of three (3) calendar days. If the owner has not retrieved the animal within such three (3) day period, the Humane Society will thereafter, at its own expense, provide for the adoption or humane disposal of the animal in accordance with its routine methods and procedures. When a stray cat is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will communicate with the City of South Daytona to determine the eligibility of the animal for the RTF Program. The RTF Program requires the following:
- i. The fee schedule listed under Fees for RTF Cats only applies for services rendered at the shelter location.
 - ii. Ear Tipping – the cats left ear is tipped in accordance with the method used by Alley Cat Allies www.alleycat.org
 - iii. Euthanasia – if the cat has a life threatening condition, the City of South Daytona's Animal Control Officers will be contacted.
 - iv. Examination – after the cat is anesthetized, an examination is performed to determine if the animal is fit for surgery and can be returned to field. If the veterinarian determines that the cat has minor conditions that should be attended to before returning to field (abscesses, scabies, wounds, etc.) the City

of South Daytona's Animal Control Officer will be contacted.

- v. The City of South Daytona's Animal Control Officers are responsible for making surgery schedule arrangements to ensure verification of program animals.
- vi. The City of South Daytona's Animal Control Officers must approve any additional procedures that are not covered under the program.

If the Humane Society veterinary representative cannot reach The City of South Daytona's Control Officers, the veterinarian can use their own judgment as to how to proceed with any necessary procedure not covered by the program.

3. BILLING & PAYMENT:

- (a) The Humane Society shall bill the City of South Daytona pursuant to Paragraph 3(b), as applicable, for:
 - (i) 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 of South Daytona's Police or Animal Control Officers;
 - (ii) each dog or cat, domesticated animal, injured animal, deceased animal, livestock animal or wild animal emanating from within the City of South Daytona and delivered to the Shelter by a private citizen; and
 - (iii) each dog or cat, domesticated animal, injured animal or deceased animal picked up by the Humane Society within the City of South Daytona.
- (b) In consideration of the agreements and undertakings to be performed by the Humane Society, the City of South Daytona agrees to pay the following applicable fee(s) per animal to the Humane Society on a monthly basis, in arrears:

Type of Animal	Fee
Dog or cat (if the cat is not eligible for RTF program)	
1st day of impoundment	\$46.00
2nd day of impoundment	\$21.00
3rd day of impoundment	\$21.00

Other domesticated animal \$35.00

Livestock animal \$80.00

Wild animal (Euthanasia) \$35.00

Deceased on arrival (Disposal) \$15.00

Quarantined animal (e.g., Rabies) \$160.00 (or \$16.00pd)
(10 day maximum stay)

Confiscated animal \$46.00 for the 1st day of impoundment plus \$21.00 for each additional day of impoundment

Fees for RTF cats

Sterilization Surgery \$45

Complimentary ear tipping,
FVRCP, Rabies Vaccines

Anesthesia Fee \$45

No surgery performed, ear
tipping, FVRCP vaccine, rabies
vaccine

Euthanasia \$45

Veterinarian determined that
patient cannot undergo surgery
due to illness/disease

Fees for Additional Services

Forensic calls and staff assistance	Staff Support:	\$10.00 per hr.
	Veterinarian Support:	\$75.00 per hr.

- (c) Payment must be made to the Humane 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 of South Daytona 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 of South Daytona has a dispute about a charge on its invoice, it must contact the Humane Society's Director of Administrative Services at 386-274-4703, extension 315, within fifteen (15) days of the date of the invoice.

- (d) The Humane Society will submit to the City of South Daytona, with its monthly invoice, a list of all pick up addresses of stray animals charged to the City of South Daytona's account for animals that were not impounded by a City of South Daytona Animal Control Officer, the names and addresses of all persons claiming any stray animals that are dropped off at the Shelter during normal operating hours, and, if known, the names and addresses of all persons claiming stray animals that are dropped off at the Shelter after-hours.
- (e) The Humane Society will use good faith efforts to try to collect from the animal's owner all costs for which the City of South Daytona is otherwise liable hereunder. In the event an owner pays any fees or charges to reclaim its animal, the City of South Daytona shall be credited to the extent any such fees or charges are paid.

4. **RABIES QUARANTINE:** The Humane Society will provide space for the 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 for a period of ten (10) days and will accept, care for and dispose of any such animal delivered to the Shelter. The Humane Society will notify the Volusia County Health Department of any rabies specimen animal that dies during the ten (10) day impoundment period, and will allow the Volusia County Health Department the opportunity to take custody of the remains of any such animal that becomes ill or dies while under confinement for such reasons. The City of South Daytona shall pay the applicable charges for quarantine service pursuant to Section 3(b) of this Agreement.

5. **CONFISCATED ANIMALS:** The Humane Society will agree to accept confiscated animals as strays or accept said animals as "confiscated" only when the provisions of Section 828.073, Florida Statutes are satisfied (*i.e.*, pursuant to a Court order after petition and hearing). The City of South Daytona shall be responsible for all charges and expenses incurred in confiscating an animal pursuant to § 828.073, Fla. Stat. The appropriate paperwork must be submitted by the seizing agent to the Humane Society within three (3) business days of impounding the confiscated animal. Failure to comply with this requirement will result in "confiscated" animals being deemed "stray" animals, at which point care of the animal will be charged to the City of South Daytona at the default "stray" rates provided in Section 3(b) of this Agreement. The City of South Daytona agrees to fully indemnify the Humane Society for any and all claims that may arise as a result of the City of South Daytona's decision to submit the animal as a stray.

6. **DANGEROUS DOG LAW:** Pursuant to Sections 767.12 and 767.13, Florida Statutes, it will be the sole responsibility of the City of South Daytona's animal control authority to determine whether a dog is dangerous and to submit to the Humane Society the necessary paperwork as required by the applicable statutes. If quarantine is necessary, a dog quarantined pursuant to Sections 767.12 and 767.13, Florida Statutes, 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 Humane Society will quarantine all dogs that the City of South Daytona's animal control authority determines to be dangerous for a maximum of ten (10)

business days. The City of South Daytona shall pay the applicable charges for such service pursuant to Section 3(b) of this Agreement. If the owner of the dog is unknown by the end of the quarantine period, the City of South Daytona may request that euthanasia be performed by the Humane Society when it is the City of South Daytona's belief that the dog poses a threat to public safety. The City of South Daytona agrees to fully indemnify the Humane Society for any and all claims that may arise as a result of the City of South Daytona's decision to submit the animal under the Dangerous Dog Law.

7. CONFISCATED ANIMALS - OWNER OF ANIMAL IS IN CUSTODY / DECEASED / HOSPITALIZED: All animals whose owners are in police custody, deceased or hospitalized may be placed in a bona fide boarding kennel or veterinary clinic at the owner's expense. The Humane Society will accept any such animals that are seized or taken by the City of South Daytona. The City of South Daytona shall pay the applicable charges for such service (*i.e.*, "Confiscated Animal") pursuant to Section 3(b) of this Agreement. The City of South Daytona agrees to fully indemnify the Humane Society for any and all claims that may arise as a result of the City of South Daytona's decision to submit the animal as Confiscated/Owner of Animal in Custody/Deceased/Hospitalized.

8. CONFISCATED ANIMALS DUE TO OWNER EVICTION: Animals seized by the City of South Daytona as a result of an owner eviction will be held by the Humane Society for the time period necessary to attempt to contact the owner by certified mail. Upon receipt of the certified mail, the owner will be afforded an additional three (3) days to reclaim his/her animal(s), and, if the owner reclaims the animal(s), he/she will be responsible for all charges, as provided in Section 3(b), from the date of seizure. If not reclaimed by the owner, all charges accruing pursuant to Section 3(b) will be paid by the City of South Daytona.

As the impounding agency, if the City of South Daytona chooses not to have the Humane Society hold the animal for the entire reclamation period referenced above, the City of South Daytona may submit the animal to the Humane Society as a "stray," in which case the animal will be held for three (3) days prior to disposition. The City of South Daytona agrees to fully indemnify the Humane Society for any and all claims that may arise as a result of the City of South Daytona's decision to submit the animal as a "stray." The City of South Daytona shall pay the applicable charges for such service pursuant to Section 3(b) of this Agreement.

9. REMEDY IN THE EVENT OF BREACH: In the event that the City of South Daytona fails to make timely payment to the Humane Society for services rendered pursuant to this Agreement, the Humane Society, in its sole discretion, may elect to terminate this Agreement and cease providing services to the City of South Daytona. If the Humane Society exercises this option, it will provide the City of South Daytona with thirty (30) days written notice of its decision to terminate the Agreement. The City of South Daytona will remain responsible for payment for all services rendered by the Humane Society prior to and during the thirty (30) day notice period. Upon expiration of the thirty (30) day notice period, the Humane Society will no longer provide any services to the City of South Daytona.

10. **WAIVER OF BREACH:** The waiver by the Humane Society or the City of South Daytona of any breach or violation of this Agreement will not operate as or be construed to be a waiver of any subsequent breach of this Agreement.

11. **SOVEREIGN IMMUNITY:** The City of South Daytona expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with §768.28, Florida Statutes. Notwithstanding anything set forth in any section of the Agreement to the contrary, nothing in the Agreement shall be deemed as a waiver of immunity or limits of liability of the City of South Daytona beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City of South Daytona for damages, regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the City of South Daytona, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

12. **PUBLIC RECORDS:** Pursuant to section 119.0701 (2)(a), Florida Statutes, the City of South Daytona is required to provide the Humane Society with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE HUMANE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE HUMANE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 322-3000, 1672 S. Ridgewood Ave, South Daytona, Florida 32119.

By entering into this Agreement, the Humane Society acknowledges and agrees that some records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any contractor entering into a contract for services with the City of South Daytona, including the Humane Society, is required to comply with the following with respect to the applicable public records:

- a) Keep and maintain public records required by the City of South Daytona to perform the services and work provided pursuant to this Agreement.
- b) Upon request from the City of South Daytona's custodian of public records, provide the City of South Daytona 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, Florida Statutes, or as otherwise provided by law.
- c) 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 contract term and following completion of the contract if the contractor does not transfer the records to the City of South Daytona.

- d) Upon completion of the contract, transfer, at no cost, to the City of South Daytona all public records in the possession of the contractor or keep and maintain public records required by the City of South Daytona to perform the service. If the contractor transfers all public records to the City of South Daytona upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City of South Daytona, upon request from the City of South Daytona's custodian of public records, in a format that is compatible with the information technology systems of the City of South Daytona.
- e) Requests to inspect or copy public records relating to the City of South Daytona's contract for services must be made directly to the City of South Daytona. If contractor receives any such request, contractor shall instruct the requestor to contact the City of South Daytona. If the City of South Daytona does not possess the records requested, the City of South Daytona shall immediately notify the contractor of such request, and the contractor must provide the records to the City of South Daytona or otherwise allow the records to be inspected or copied within a reasonable time.


The Humane Society acknowledges that failure to provide the applicable public records to the City of South Daytona within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. The Humane Society further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City of South Daytona. Humane Society shall indemnify, defend, and hold the City of South Daytona harmless for and against any and all claims, damage awards, and causes of action arising from Humane Society's failure to comply with the applicable public records disclosure requirements of section 119.07(1), Florida Statutes, or by Humane Society's failure to maintain any applicable public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. Humane Society authorizes City of South Daytona to seek declaratory, injunctive, or other appropriate relief against Humane Society from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

13. **MEDIATION:** Any dispute arising from this Agreement, including, but not limited to, disputes over fees for services, will be mediated prior to a lawsuit being filed. Mediation will occur within sixty (60) days of written request by either party to mediate unless agreed to otherwise. The written request must be delivered in accordance with the provisions of Paragraph 18, below, of this Agreement. The cost of the mediator's fee will be borne equally by the parties.

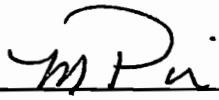
14. **ATTORNEY'S FEES:** Both parties agree to bear the cost of their own attorneys' fees with respect to any disputes, lawsuits, or claims arising under this Agreement, except unless otherwise specifically allowed elsewhere in this Agreement or in the event of an action to recover amounts due under Part VII, Chapter 218, Florida Statutes, in which case, the court shall award court costs and reasonable attorney's fees, including fees incurred through appeal, to the prevailing party.
15. **GOVERNING LAW AND VENUE:** The parties further agree that this Agreement will be governed by the laws of the State of Florida and that venue for any and all suits arising out of or otherwise attributable to this Agreement will lie exclusively in the courts of Volusia County, Florida, unless the matter at issue is solely cognizable in federal court, in which case, venue shall be in the Middle District of Florida, Orlando Division.
16. **SEVERABILITY:** If any provision of this Agreement or any part of any provision of this Agreement is found to be invalid by a court of competent jurisdiction, such will not affect the validity of any other provision, or part thereof, of this Agreement.
17. **ENTIRE AGREEMENT:** This Agreement constitutes the entire and final understanding and agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly or indirectly, collaterally related to the subject matter of this Agreement.
18. **AMENDMENTS:** This Agreement cannot be amended or modified except by a writing executed by both of the parties hereto or their respective administrators, trustees, personal representatives and successors.
19. **NOTICES:** Any written notice required to be given under this Agreement is to be mailed by registered or certified mail, postage prepaid, to the party's business address or any other address designated for that purpose by written notice and sent to the attention of the City Manager with respect to the City of South Daytona and to the attention of the CEO with respect to the Humane Society.

IN WITNESS WHEREOF, the Humane Society and the City of South Daytona have executed this Agreement for Services between Halifax Humane Society Inc. and the City of South Daytona, effective on the date and year as set forth above.

HALIFAX HUMANE SOCIETY, INC.

By: 
Name: Miguel Abi-hassan
Title: Chief Executive Officer
Date: 8/14/20

ATTEST:

By: 
Name: Michelle Pari
Title: Chief Operating Officer
Date: 8/14/20

CITY OF SOUTH DAYTONA

By: _____
Name: William C. Hall
Title: Mayor
Date: _____

ATTEST:

By: _____
Name: James L. Gillis, Jr.
Title: City Manager
Date: _____