



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

March 21, 2017

Kelly Udall, Town Manager
Town of Sahuarita
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

Re: **Animal Care Services**

Dear Mr. Udall:

Pursuant to our March 20, 2017 telephone conversation regarding this subject, this letter serves to document our discussion.

First, I understand the Town of Sahuarita will only enter into an intergovernmental agreement (IGA) based on the expressed terms and conditions outlined in the proposed IGA you transmitted to the County. This proposed IGA is a significant departure from our present animal care practices. These differences are highlighted in my March 20, 2017 memorandum to Supervisor Valadez (attached). The County views your proposed IGA as a retreat from the present animal care policies of the County that favor adoption over euthanasia.

As we also discussed, the County will be enacting an ordinance to ensure cost transfers do not occur between our remaining regional partners and jurisdictions that choose to provide separate services, which will now include the Towns of Marana and Sahuarita. These ordinances will be recommended to the Board of Supervisors for adoption and will become effective before July 1, 2017.

Finally, to clarify the County's State law obligations within cities and towns, we have often heard claims of "double taxation." Such is not valid, since the County has no obligation to provide any services for animal care inside a city or town. Please see the attached memorandum from the Pima County Attorney dated September 29, 2014 for which the Board of Supervisors waived attorney-client privilege in a public meeting on November 18,

Mr. Kelly Udall
Re: **Animal Care Services**
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Page 2

2014. The County will continue to respond, on a regional basis, to rabies cases due to public health concerns should the Town need such. These services will be provided without cost to Town residents.

If Sahuarita wishes to pursue other alternatives for providing animal care services, we will work with Town staff to effectuate a smooth and complete transition of services on or before June 30, 2017.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/anc

Attachments

- c: The Honorable Chair and Members, Pima County Board of Supervisors
Jan Leshar, Chief Deputy County Administrator
Dr. Francisco Garcia, Assistant County Administrator for Community and Health Services



MEMORANDUM

Date: March 20, 2017

To: The Honorable Ramón Valadez
District 2 Member
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

A handwritten signature in black ink, appearing to be "C.H. Huckelberry", is written over the printed name of the County Administrator.

Re: **Pima Animal Care Center Intergovernmental Agreement with the Town of Sahuarita**

There has been considerable discussion recently regarding Pima Animal Care Center's (PACC's) Intergovernmental Agreement (IGA) with the Town of Sahuarita. The present IGA expires July 1, 2017.

As you know, the Town of Marana, by a Council vote of 5 to 2, decided to terminate their participation in the regional animal care system as of July 1, 2017. Perhaps Sahuarita desires to do the same.

For your information, I have attached the original IGA transmitted by Pima County to Sahuarita for their review (Attachment 1). In return, we received a revised IGA from Sahuarita (Attachment 2). The two documents are vastly different. The concepts outlined in the Sahuarita Draft IGA are identical to concepts expressed by Marana in our early discussions with Marana regarding the renewal of Marana's IGA. The major differences are outlined below.

1. Significant change in philosophy regarding animal care. As you read Attachments 1 and 2, please note the major differences highlighted in yellow. The deletions of most concern relate to language that enunciates, clarifies and expands animal treatment. In fact, in reviewing Section 3.5.2 in our IGA, half of the language has been deleted. The most concerning is *"the Pima Animal Care Center shall develop a strategy and procedures to further reduce euthanasia savable animals through effective adoption and rescue programs."* This concept has been deleted in the Sahuarita draft. They have also completely deleted the section regarding animal welfare and community outreach. Hence, the philosophy stated in the Sahuarita draft is a return to the euthanasia-driven model the County abandoned several years ago.
2. Five-day hold period. Section 3.3.2 of the Sahuarita draft clearly indicates Sahuarita is willing to pay for sheltering services for only the statutory period established by law. The current average length of stay in the PACC is 10.3 days. Under Sahuarita's draft, the Town would transfer the cost of this additional stay to the County for Sahuarita animals. This creates a financial incentive to euthanize Sahuarita animals after the five-day period. Such is unacceptable.

3. Animal welfare. The County's IGA contains an obligation under Licensing to maximize the number of dogs vaccinated and licensed within the jurisdiction. Vaccinations and licensing minimizes public health risks. This language has been deleted from the Sahuarita draft IGA.
4. Veterinary Services. The Sahuarita draft IGA describes veterinary services even though the County provides these services as an all-inclusive cost or fee to Sahuarita. It is unclear why they specifically defined these services other than to understand they are necessary for sick and injured animals and that it is a cost incurred by the County, since the County employs three licensed veterinarians. Providing these services through contracted private veterinarians would be costly. It is unclear why Sahuarita has spelled out specifically veterinarian services in their draft IGA.
5. Payments. In Sahuarita's draft IGA, payments are limited to \$35,000. Our budget estimate for next Fiscal Year is \$96,000. The County's IGA stipulates an \$88,000 cost. If this is the limit of reimbursement, the County will not agree to subsidize Sahuarita's animal care using other jurisdictions' funds or County funds designated for services for the unincorporated area of Pima County. The Town has offered to offset the payment by having the County retain licensing fees. Such is inappropriate, since the County desires that jurisdictions provide incentives and encourage their residents to license their animals. We would continue to recommend the Town retain these fees, provided the Town has an active program to encourage licensing of animals owned by residents within the Town.
6. Services Costs. Pima County's IGA goes to great lengths to itemize, justify and document the cost incurred by Sahuarita for our services. We are puzzled by the Town's removal of these details in their proposed IGA. The Town's employees have been quite vociferous in wanting extremely specific information regarding PACC activities within the Town in the quarterly meetings held by the County with our regional PACC partners, yet this information has been deleted in their draft.

We do not understand Sahuarita's objections to our draft IGA. Unless there can be an immediate resolution to this issue, and since Sahuarita accounts for less than one percent of revenues supporting the PACC budget, it may be appropriate for Sahuarita to seek others to provide animal care services.

Pima County will not abandon our animal care adoption model in favor of a euthanasia model.

CHH/anc
Attachments

c: Jan Leshner, Chief Deputy County Administrator
Dr. Francisco Garcia, Deputy County Administrator for Health Services

ATTACHMENT 1

PC
A

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF SAHUARITA
FOR ANIMAL CARE AND ENFORCEMENT SERVICES**

This Intergovernmental Agreement (hereinafter "Agreement") is entered into pursuant to A.R.S. § 11-952 by and between the Town of Sahuarita (hereinafter "the Town"), a body politic and corporate of the State of Arizona and Pima County, (hereinafter "the County") a political subdivision of the State of Arizona.

RECITALS

WHEREAS, the Town desires to enter into an agreement with the County for the provision of animal control services within the geographical jurisdiction of the Town relating to enforcement of rabies vaccination and dog licensing requirements, dog license fees, leash laws, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, biting animals, animal waste, and excessive noise; and

WHEREAS, pursuant to A.R.S. § 11-1013, the County operates the Pima Animal Care Center for the intake and sheltering of stray and surrendered animals; and

WHEREAS, the County has the experience and expertise to enforce Town Animal Control Ordinances, and is engaged in certain activities relating to vaccination and licensing activities, rabies control, stray and surrendered animal intake; and

WHEREAS, the Town and the County may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

NOW, THEREFORE, the Town of Sahuarita and the County, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

modified

1.0 Purpose. The purpose of this Agreement is to set forth the responsibilities of the parties for the provision of animal control services within the geographical jurisdiction of the Town relating to enforcement of the Town Animal Control Ordinances, as amended from time to time, and having to do with rabies vaccination and dog licensing requirements, dog license fees, leash laws, sheltering and humane care of surrendered and stray animals, animal cruelty and neglect, dangerous animals, diseased animals, biting animals, animal waste, and excessive noise.

2.0 Term/Effective Date. This Agreement is effective from July 1, 2017 through June 30, 2018. The Parties shall have the option to extend this Agreement for up to four (4) 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.

3.0 Scope of Services.

3.1 The County Enforcement Agent, herein before designated by the Pima County Board of Supervisors to be Pima Animal Care Center (PACC), and all employees thereunder, shall be referred to as "Town Enforcement Agents" for the purpose of this Agreement. The Town Enforcement Agents shall, but are not limited to:

3.1.1 Administer and enforce the provisions of the Town Animal Control Ordinances and State and County law, and all services related thereunder, including amendments to said laws as may be passed from time to time.

3.1.2 Pursuant to this Agreement, be granted limited police powers necessary from time to time to carry out duties imposed by this Agreement, together with any and all such further powers as may be necessary for such agents to engage in vaccination, licensing, seizure of stray, dangerous, neglected, diseased or abused animals, and other activities arising from their duties as Town Enforcement Agents.

3.1.3 Collect such fees as may be rendered applicable by the Town Animal Control Ordinances. All fees collected by the Town Enforcement Agents as a result of this Agreement shall be retained by Town.

3.2 The Town Attorney shall prosecute and the Town Court shall handle criminal and civil matters arising out of the enforcement of the Town Animal Control Ordinances, as amended, pursuant to this Agreement. All fines collected by the Town Court as a result of enforcement of the Town Animal Control Ordinances, as amended, shall be retained by Town.

3.3 Field Enforcement Within Jurisdiction

3.3.1 Complete field services shall be provided from 6:00 a.m. to 9:00 p.m. by two full shifts of Animal Care Officers operating seven days per week, holidays included. Emergency enforcement response services will be provided by a minimum of one Animal Care Officer from 9:00 p.m. to 6:00 a.m. daily, holidays included.

3.3.2 The County shall provide staffing levels, administrative support, materials, supplies, and equipment sufficient to ensure the provision of animal control services in the Town.

3.3.3 Dead animal pickup services shall be provided during one shift operating seven days per week, holidays included.

3.4 Licensing of Animals

3.4.1 The County shall provide staffing levels, administrative support, materials, supplies, and equipment sufficient to ensure the provision of licensing services in the Town.

3.4.2 The Pima Animal Care Center shall maximize the number of dogs vaccinated and licensed within the geographical jurisdiction of the Town. Dog vaccination

omitted by Town

requirements and spay/neutering information shall be distributed to all owners of licensed dogs and other interested parties upon request.

3.4.3 License applications shall be processed and returned, electronically or via mail, to the applicant within ten (10) working days. A licensing reminder program shall be conducted to improve compliance with license regulations.

3.4.4 Should Pima Animal Care Center consider outsourcing the licensing functions to take advantage of online registration via the Internet, Pima Animal Care Center shall ensure that day-to-day licensing and registration operations, including telephone services, remain equivalent to those currently provided by the Center.

3.5 Pima Animal Care Center Shelter

3.5.1 The County shall staff, equip, furnish, support and maintain the Pima Animal Care Center, and provide all facilities and vehicles, including replacements, maintenance, repair, gasoline, and oil as necessary for the operation of the Pima Animal Care Center.

deleted

3.5.2 Humane treatment of all animals housed at the Pima Animal Care Center shall be provided, including provision of adequate food, water, shelter, and timely and appropriate veterinary care in accordance with nationally accepted shelter care standards. The Pima Animal Care Center shall develop a strategy and procedures to further reduce euthanasia of saveable animals through effective adoption and rescue programs. If necessary, animals shall be euthanized in such a manner that provides for humane treatment of the animal and in accordance with the standards set forth by the American Veterinary Medical Association Guidelines for the Euthanasia of Animals: 2013 Edition. Effort shall be made to decrease shelter intake through but not limited to owner education and community wide spay/neuter programs.

deleted

3.5.3 Animal Welfare Community Outreach. The Pima Animal Care Center shall refine and increase outreach and educational efforts at schools, neighborhood association meetings, etc. in order to increase public awareness of health and safety issues related to animals, to promote responsible ownership/companion animal guardianship, including compliance with licensing and other Town Animal Control Codes, and to disseminate information regarding vaccination clinics, spaying and neutering, and care of animals.

4.0 Payment. The Town will reimburse the County approximately \$88,270¹ for Fiscal Year 2017-2018. The County will bill the Town monthly for services. The total cost delineated in 4.1

¹ The annual estimated allocation is based on the average of the previous two full fiscal years' ratio of expenses incurred in the provision of animal services to the Town as compared to the total expenses for services provided for all jurisdictions. For example, Fiscal Year 2017/18 allocation to the Town is 1.02% of the total PACC budget and represents an average of the Town's percent allocation of total animal services expenditures incurred by the County for Services in the Town for Fiscal Years 2014/15 and 2015/16. The County will provide the Town the annual estimated expenses for PACC and the Town's estimated share of expenditures for Fiscal Year 2018/19 no later than January 31, 2018.

below is the estimated cost of service for the Town of Sahuarita. Actual cost may vary and will be based on documented services provided to the Town or Town residents. Monthly bills may be adjusted on a quarterly basis as set forth in Section 5.2.1.

4.1 Town will reimburse the County for expenses associated with providing the scope of services outlined in Section 3. Annual costs of service units are projected below. The Town may elect to reduce its overall costs by declining or reducing the scope of Enforcement services provided to Town by County.

<u>Expenses</u>	<u>Amount</u>	<u>Allocation Basis</u>
Administrative Service Charges	\$ 8,964	Ratio of all Services Provided
Operations and Management	\$ 7,949	Ratio of all Services Provided
Education	\$ 944	Ratio of all Services Provided
Enforcement	\$ 25,548	Ratio of Enforcement Call Responses
Licensing	\$ 11,618	Ratio of Licenses Issued
Shelter	\$ 16,685	Ratio of Animals Handled
Veterinary Services	\$ 6,042	Ratio of Animals Handled
Spay/Neuter Services	\$ 4,908	Per Capita
Community Cat Project	\$ 5,612	Per Capita
TOTAL	\$ 88,270	

4.2 Town will reimburse County for County indirect service expenses associated with providing PACC administrative systems support such as Finance, Human Resources, Procurement, Legal and other indirect County support services based on the federally approved internal cost allocation plan. Such services are listed as Administrative Service Charges.

4.3 Donations to and solicited by PACC are the sole property of PACC and will be allocated against Town expenses in accordance with PACC fund development policies. Should budget restrictions prevent the Town from paying for the full Fiscal Year 2017-2018 intergovernmental agreement amount set out in Section 4.0, the Town may adjust enforcement service levels and or types to mitigate funding shortfalls.

4.4 All payments received from constituents on behalf of the Town will be deposited regularly with the Pima County Treasurer's Office into a Fiduciary Agency Account. The County will submit a statement to the Town monthly for actual costs incurred on behalf of the Town, 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.

5.0 Reporting. The County will provide the Town the following information:

5.1 Monthly:

- 5.1.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.
- 5.1.2 By jurisdiction, the percentage of administrative services allocated, 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 animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.
- 5.1.3 The total Pima County Animal Care adopted budget, including operating revenues by revenue source and operating expense by type of expense.

5.2 Quarterly:

- 5.2.1 The County will perform an audit to assure correct cost allocation and to verify jurisdictional information on a quarterly basis. If, pursuant to paragraph 4.1, the outcome of the audit indicates an overpayment by the Town or results in additional funds being due to Town, County shall transfer the additional funds to the Account within ninety (90) days following the end of the quarter. If, pursuant to paragraph 4.1 the outcome of the audit indicates an underpayment by the Town or additional funds being due to the County, the amount of the underpayment will be billed to the Town by the County in the next monthly statement.
- 5.2.2 County will provide to Town on a quarterly basis a data extract or extracts containing detailed information regarding records of requests for services and records of revenue attributed to Town. This report shall include the following:
 - 5.2.2.1 Dates of dispatched enforcement calls
 - 5.2.2.2 Activity types of dispatched enforcement calls (e.g., leash law, stray)
 - 5.2.2.3 Physical address of response site
 - 5.2.2.4 Dates of issuance of licenses
 - 5.2.2.5 Types of licenses issued
 - 5.2.2.6 Payment received for each license issued
- 5.2.3 The Town will designate a representative to attend quarterly meetings with representatives from Pima County Administration, Pima County Health Department, Pima Animal Care Center and each jurisdiction with which the County has an Intergovernmental Agreement to provide PACC services.

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5.3 Fiscal Year End: The County shall prepare a final financial report for each Fiscal Year that includes the following information:

5.3.1 By jurisdiction, a statement of period-end and year-to-date receipts, disbursements, and the balance of the County Rabies Control Fund.

5.3.2 By jurisdiction, the percentage of administrative services allocated, 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 animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.

5.3.3 The total Pima County Animal Care adopted budget including operating revenues by revenue source and operating expenses by type of expense.

6.0 **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Town or the County. This Agreement and all obligations upon the Town or County arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulations.

7.0 **Audit.** The Town shall have the right to audit the books of the County relating to the Pima Animal Care Center and to the collection of licensing fees and other fines and fees.

8.0 **Termination.** Either party may terminate this Agreement by giving written notice to the other party not less than six (6) months prior to the termination date. In the event of termination, each party shall be liable for its proportionate share of the costs and expenses incurred or arising out of performance of activities required by this Agreement occurring prior to the termination date. Termination of this Agreement shall not relieve either party from liabilities or costs already incurred under this Agreement.

9.0 **Assignment of Rights.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

10.0 **Construction of Agreement.**

10.1 Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.

10.2 Captions and headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

11.0 **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

12.0 **Severability.** In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In

the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

- 13.0 No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the Town and any County employees or between the County and any Town employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 14.0 No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
- 15.0 Compliance with Laws.** The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.
- 15.1 Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
- 15.2 Americans with Disabilities Act. This Agreement is subject to 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.
- 16.0 Workers' Compensation.** An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:
- 16.1 All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency, pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.
- 17.0 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.

18.0 Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state, or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

19.0 Notification. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima County:

Francisco Garcia, MD, MPH, Director
Pima County Health Department
3950 S. Country Club Road #100
Tucson, Arizona 85714

Kim Janes
Chief of External Affairs
Pima Animal Care Center
3950 S. Country Club #100
Tucson, Arizona 85714

Town of Sahuarita:

Mayor
Town of Sahuarita
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

Town Staff Member
Title
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

20.0 Remedies. Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

21.0 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 the 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, and are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

22.0 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

23.0 Legal Arizona Workers Act.

23.1 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.

23.2 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.

23.3 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.

23.4 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."

24.0 Israel Boycott Certification. Contractor hereby certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel as defined by A.R.S. § 35-393.01. Violation of this certification by Contractor may result in action by the County up to and including termination of this Contract.

25.0 Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed by the Pima County Board of Supervisors, as attested to by the Clerk of the Board, and the Town of Sahuarita has caused this Agreement to be executed by the Mayor of the Town of Sahuarita, upon resolution of the Mayor and Council, as attested to by the Town Clerk.

PIMA COUNTY:

TOWN OF SAHUARITA:

Chair, Board of Supervisors

Date

Town Mayor

Date

ATTEST

ATTEST

Clerk of the Board

Date

Town Clerk

Date

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

Department Director or designee

Date

Department Director or designee

Date

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Town of Sahuarita has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

Deputy County Attorney

Date

Town Attorney

Date

ATTACHMENT 2

Schultz

B

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
PIMA COUNTY AND THE TOWN OF SAHUARITA
FOR ANIMAL CARE AND ENFORCEMENT SERVICES**

This Intergovernmental Agreement (hereinafter "Agreement") is entered into pursuant to A.R.S. § 11-952 by and between the Town of Sahuarita (hereinafter "the Town"), a body politic and corporate of the State of Arizona and Pima County, (hereinafter "the County") a political subdivision of the State of Arizona.

RECITALS

WHEREAS, the Town desires to enter into an agreement with the County providing that the County will enforce the provisions of the Sahuarita Town Code ("STC") Title 6 as provided in A.R.S. § 11-1005 (A) (3); and

WHEREAS, the County has the experience and expertise to enforce STC Title 6, and is engaged in similar activities through Pima County; and

WHEREAS, the Town and the County may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-1005 (A) (3) and A.R.S. § 11-951, *et seq.*

NOW, THEREFORE, the Town of Sahuarita and the County, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to permit and obligate the County to enforce the provisions of STC Title 6 as provided in A.R.S. § 11-1005 (A) (3).
2. **Term/Effective Date.** This Agreement is effective for one (1) year from July 2017 through June 30, 2018. The Parties shall have the option to extend this Agreement for up to 4 additional 1-year periods or any portion thereof. Any modification, termination, or extension shall be made by formal written amendment executed by the Parties.
3. **Scope of Services.**
 - 3.1 **Enforcement.** The County shall enforce the provisions of STC Title 6 as provided in A.R.S. § 11-1005 (A) (3). In order to facilitate this, the County Enforcement Agent, herein before designated by the Pima County Board of Supervisors to be Pima Animal Care Center ("PACC"), and all employees thereunder, shall serve as "Town Enforcement Agents" as such term is defined in STC Section 6.05.020. The Town Enforcement Agents shall, but are not limited to:
 - 3.1.1 Administer and enforce the provisions of STC Title 6 and state law and all services related thereunder, including amendments to said laws as may be passed from time to time.
 - 3.1.2 Be granted limited police powers necessary from time to time to carry out duties imposed by STC Title 6, together with any and all such further

powers as may be necessary for such agents to engage in vaccination, seizure of stray, dangerous, neglected, diseased or abused animals, and other activities arising from their duties as Town Enforcement Agents.

3.1.3 The Town Attorney shall prosecute and the Town Court shall handle criminal and civil matters arising out of the enforcement of STC Title 6. All fines collected by the Town Court as a result of enforcement of the Town Animal Control Ordinance as amended, shall be retained by Town.

3.1.4 Field Enforcement Within Jurisdiction.

3.1.4.1 Complete field services shall be provided from 6:00 a.m. to 9:00 p.m. by two full shifts of Animal Care Officers operating seven days per week, holidays included. Emergency enforcement response services will be provided by a minimum of one Animal Care Officer from 9:00 p.m. to 6:00 a.m. daily, holidays included.

3.1.4.2 Dead animal pickup services shall be provided during one shift operating seven days per week, holidays included.

3.1.4.3 The County shall staff, equip, furnish, support and maintain the PACC, and provide all facilities and vehicles, including replacements, maintenance, repair, gasoline, and oil as necessary for the operation of the PACC to ensure the provision of adequate animal control services in the Town.

new ? reason

3.2 Licensing of Animals. The County shall license dogs as provided in A.R.S. § 11-1008.

3.3 Sheltering of Animals.

3.3.1 The County shall provide sheltering services to animals seized in the Town, and such services shall include humane treatment of all animal, including provision of adequate food, water, and shelter in accordance with nationally accepted shelter care standards.

cost transfer

3.3.2 Following expiration of the hold period set forth in A.R.S. § 11-1013 (C), responsibility of ownership of animals will transfer from the Town to the County.

(5 days)

3.4 Veterinary Services. The County shall provide veterinary care for animals seized from the Town and being sheltered by the County, in accordance with nationally accepted shelter care standards.

payment

\$96K 17/18 Budget year.

4. Payment.

4.1 The Town will pay the County the fixed sum of \$35,000.00 for the services set forth in Section 3 of of this Agreement, in quarterly installments of \$8,750.00.

4.2 As additional compensation, the County shall be entitled to retain all license fees collected from licensing of Town animals as provided in STC 6.10.030 and STC 6.10.040.

Town offset in cost to create incentive for Town to encourage license compliance

not close

no vert offset

4.3 As additional compensation, the County shall be entitled to retain all payments received by the County from constituents on behalf of the Town.

for school

5. **Reporting.** Every quarter the County will provide the Town with a report of the following activity within the Town's boundaries:
 - 5.1 The number, dates and types of dog licenses issued;
 - 5.2 The number of calls that resulted in a response from the PACC, including the physical address of the response site, the date, and the activity type for each response; and
 - 5.3 The number of animals processed at the shelter, including animals seized by enforcement within the Town boundaries, the number of animals adopted, the number of animals euthanized, the number of animals spayed and neutered, the number of dead animals picked up, the number of animals that died in the kennels and the number of educational event units performed.
6. **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Town or the County. This Agreement and all obligations upon the Town or County arising therefrom shall be subject to any limitations of budget law or other applicable local law or regulations.
7. **Termination.** Either party may terminate this Agreement by giving written notice to the other party not less than 60 days prior to the termination date. In the event of termination, the Town shall prorate the quarterly payment due to the County. Termination of this Agreement shall not relieve either party from liabilities or costs already incurred under this Agreement.
8. **Assignment of Rights.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.
9. **Construction of Agreement.** All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
10. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
11. **Severability.** In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
12. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the Town and any County employees or between the County and any Town employees.

Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

13. **No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or effect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
14. **Compliance with Laws.** The parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.
 - 14.1 **Anti-Discrimination.** The provisions of A.R.S. § 41-1463 and Executive Order Number 2009-09 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Agreement.
 - 14.2 **Americans with Disabilities Act.** This Agreement is subject to 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.
15. **Workers' Compensation.** An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency, pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.
16. **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.
17. **Force Majeure.** A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage,

casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state, or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

18. **Notification.** All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima County:

Francisco Garcia, MD, MPH, Director
Pima County Health Department
3950 South Country Club Road
Tucson, Arizona 85701

Kim Janes
Chief of External Affairs
Pima Animal Care Center
3950 S. Country Club
Tucson, Arizona 85715

Town of Sahuarita:

Kelly Udall
Town Manager
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

Daniel J. Hochuli
Town Attorney
375 W. Sahuarita Center Way
Sahuarita, Arizona 85629

19. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

20. **Indemnification.** To the fullest extent permitted by law, each Party (as "indemnitor") shall defend, indemnify and hold harmless the other Party (as "indemnitee"), its officers, officials, employees, agents, volunteers, successors, and assigns ("Indemnified Group") for claims, damages, losses, liabilities and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense) relating to, arising out of, resulting from or alleged to have resulted from the indemnitor's acts, errors, mistakes or omissions relating to any action or inaction of this Agreement (collectively, "Claims") including but not limited to work, services, acts, errors, mistakes, or omissions in the performance of this Agreement by anyone directly or indirectly employed by or contracting with the indemnitor, or any person for whose acts and liabilities are the obligation of the indemnitor. If any claim, action or proceeding is brought against the Indemnified Group, indemnitor shall have a duty, at its sole cost and expense, to resist or defend such claim or action on behalf of the Indemnified Group, but only to the extent that such claims result in vicarious/derivative liability to the indemnitee and are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers, provided, however, that the indemnitor shall have no obligation to indemnify the Indemnified Group for the Indemnified Group's passive negligence. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

22. **Legal Arizona Workers Act.**

22.1 The Parties hereby warrant that each will at all times during the term of this Agreement comply with all federal immigration laws applicable to the 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 subcontractor who performs any work under this Agreement likewise complies with the State and Federal Immigration Laws.

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

22.3 Any breach of a Party'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 Agreement, subjecting the Party 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 Party 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 the provisions of this Agreement.

22.4 Each Party shall advise all subcontractors of the subcontractor's obligations under this Section 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."

23. **Entire agreement.** This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits to this Agreement are incorporated herein by this reference.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed by the Pima County Board of Supervisors, as attested to by the Clerk of the Board, and the Town of Sahuarita

has caused this Agreement to be executed by the Mayor of the Town of Sahuarita, upon resolution of the Mayor and Council, attested to by the Town Clerk.

PIMA COUNTY:

TOWN OF SAHUARITA:

_____	_____	_____	_____
Chair, Board of Supervisors	Date	Town Mayor	Date

ATTEST

ATTEST

_____	_____	_____	_____
Clerk of the Board	Date	Town Clerk	Date

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

_____	_____	_____	_____
Department Director or designee	Date	Department Director or designee	Date

ATTORNEY CERTIFICATION

The foregoing Agreement between Pima County and the Town of Sahuarita has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

_____	_____	_____	_____
Deputy County Attorney	Date	Town Attorney	Date



**ATTORNEY/CLIENT PRIVILEGED
M E M O R A N D U M**

Pima County Attorney's Office
Civil Division

32 North Stone Ave, Suite 2100
Phone 520.740.5750 Fax 520.620.6556

This is a privileged attorney-client communication and should not be disclosed to persons other than Pima County officials and employees involved in the matter that is the subject of the communication. The privilege is held by Pima County and can be waived only by an official action of the Board of Supervisors.

To: C.H. Huckelberry, County Administrator

From: Paula J. Perrera, Deputy Pima County Attorney *PJP*

Date: September 29, 2014

Subject: Termination of City of Tucson Intergovernmental Agreement (IGA) for PACC services

Q: What is the correct procedure to terminate the Intergovernmental Agreement (IGA) between Pima County and the City of Tucson for the provision of animal care services?

A: Paragraph 14 of the IGA states "Either party may terminate this Agreement by giving written notice to the other party by not less than six (6) months prior to the termination date." Accordingly, if the Board of Supervisors decides to terminate the IGA they could then authorize the Chair or a designee to send written notice of termination to the City of Tucson.

Q: Which services is the County required to provide inside the City of Tucson if the IGA is terminated?

A: None. A.R.S. Ch.7 Art. 6 authorizes the County Board of Supervisors to perform many functions including the designation of a county enforcement agent who is responsible for enforcement of the provisions of Art. 6. Among the powers granted to the Board of Supervisors are the ability, but not the obligation, to establish a county pound, contract with cities and towns for enforcement of their ordinances, perform licensing and rabies control functions, as well as the impoundment of stray animals and management of biting animals and aggressive dogs. However, A.R.S. §11-1018 B provides that the provisions of Art. 6 do not apply to counties "which regulate the running at large of dogs in the unincorporated areas of the county by ordinance provided that such ordinance is equal to or more stringent than the provisions of this article." Section 6.04.030 of the Pima County Code regulates the running at large of dogs in unincorporated Pima County and is at least equal to the provisions of Art. 6. Therefore Pima

County is relieved from any of the functions or duties otherwise required by Art. 6. See Op. Atty. Gen. No. 184-078. Further, because Chapter 6.04 of the Pima County Code regarding Animal Control is only applicable to unincorporated Pima County the County doesn't possess independent authority to perform those functions in incorporated areas of the County.

PJP/blp

**cc: Christopher Straub, Chief Civil Deputy
Jan Leshar, Deputy County Administrator – Med. & Health**

[REDACTED]