

2/2/2017

15-R-17

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute an Agreement with EASA to serve as the City's Volunteer Animal Organization for the Evanston Animal Shelter and Adoption Center

WHEREAS, the City Council adopted Ordinance 54-O-14 on April 28, 2014 which created the Animal Welfare Board to provide direction and guidance for the Animal Shelter and Adoption Center located at 2310 Oakton Street (the "Shelter"); and

WHEREAS, the City Council, with the Animal Welfare Board's recommendation, adopted Resolution 56-R-15 to select the Evanston Animal Shelter Association ("EASA"), an Illinois not-for-profit corporation, to operate the Shelter in 2015 for a period of two years (June 1, 2015 – May 31, 2017); and

WHEREAS, the City Council of the City of Evanston has determined it is in the best interests of the City to continue the partnership and further its community expectations and standards of providing a high quality and safe environment for pets to be sheltered and adopted,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:


SECTION 1: The City Manager is hereby authorized and directed to execute the Animal Shelter Agreement (the "Agreement") by and between the City of Evanston and the Evanston Animal Shelter Association for a two-year term (June 1, 2017 – May 31, 2019), the Agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any remaining terms of the Agreement as he may be deem to be in the best interests of the City.

SECTION 3: That this Resolution 15-R-17 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: March 13, 2017

EXHIBIT 1

EVANSTON ANIMAL SHELTER AGREEMENT

VOLUNTEER ANIMAL ORGANIZATION AGREEMENT

THIS VOLUNTEER ANIMAL ORGANIZATION AGREEMENT (hereinafter referred to as the "Agreement") entered into this 10 day of April, 2017, by and between the City of Evanston, an Illinois municipal corporation (hereinafter referred to as the "City"), and Evanston Animal Shelter Association ("EASA"), an Illinois not-for-profit corporation (hereinafter referred to as the "VAO" or "EASA"). The City and VAO shall be referred to as the "Parties".

RECITALS

WHEREAS, the City's community standards, as reflected by the City Council's goals and expectations, makes it plain that the City capital planning, infrastructure investments, facility improvements are a priority, including the Evanston Animal Shelter and Adoption Center (the "Shelter"); and

WHEREAS, the renovations and facility improvements to the Shelter are entrenched in a larger evaluation of the City operational departments with a focus on efficiency of service resulting in a realignment of City staff roles and responsibilities; and

WHEREAS, The transfer of the Animal Shelter and control operations out of the Police Department and to staff of the City Manager's Office, is a result and reflection of the thoughtful and substantive deliberations over many years by the Evanston City Council, City staff, and community partners regarding these issues; and

WHEREAS, the Parties believe it is in the best interests of both the animals, community members, the VAO and City staff members to formalize the expectations regarding customer service, shelter facility operations, and animal training and kennel enrichment activities in this agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are acknowledged, it is mutually agreed by the Parties hereto as follows:

I. **RECITALS.** The Parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

II. **SHELTER FACILITY**

A. **Property.** The City is the fee simple owner of the Shelter and land located at 2310 Oakton Street, Evanston, Illinois 60202 (the "Property"). This Agreement is not a lease agreement and the VAO is not renting the Shelter from the City or being assessed a rental fee for use of the Shelter property. The VAO is the City's partner to operate the Shelter and perform Services outlined above.

B. **Maintenance.** The City as the owner of the property is responsible for all maintenance, repair, and any construction obligations relative to the Shelter and Property

and in the City's sole discretion; it will make decisions relative to the same.

C. Utilities. The City at its sole cost and expense will pay for all utilities that service the Shelter facility.

D. Bulk Food Purchases. VAO will purchase bulk food and cat litter for the Shelter and submit receipts to the City for reimbursement.

E. Vaccines and Rabies Tags. VAO purchases necessary equipment and medication for VAO to administer vaccines, provide rabies tags, heartworm, and flea/tick preventative care for all animals at the Shelter and will submit receipts for reimbursement from the City for said purchases.

F. Fees and Operating Expenses: EASA will fund all operations assigned to it under this Agreement.

G. Standard Operating Procedures. The Evanston Police Department has established an Animal Control Standard Operating Procedure Manual (the "SOP"), which are attached as Exhibit A and incorporated herein by reference. The Parties acknowledge and agree to abide by the terms of the SOP, as amended.

III. TERM

Subject to the provisions of this Agreement, the "Term" shall commence on the 1st day of June, 2017 ("Commencement Date") and shall end on the 31st day of May, 2019 (two years), except as otherwise terminated as provided herein. The Agreement will be reviewed on or around the one year anniversary of the Commencement Date by the Human Services Committee of the City Council for compliance with all terms and conditions of this Agreement.

IV. SERVICES AND RESPONSIBILITIES

A. Services.

1. General Services. VAO shall perform the services (the "Services") that include, but are not limited to: (a) coordinating volunteer and adoption programs; (b) coordinating and funding medical and behavioral care and training for the shelter animals; (c) providing special food and supplies for the animals and volunteer staff that is above the ordinary bulk food and supplies provided by the City; and (d) fundraising for costs to support the Shelter assigned to it under this Agreement.
2. Performance of Services. VAO shall perform the Services in a professional manner. The Parties anticipate the working hours will be Monday – Friday (except Wednesday) 6 p.m. – 8 p.m. and Saturday and Sunday 12 p.m. – 3:30 p.m., and holiday schedules of City while working and to perform its Services in a manner which does not unreasonably interfere with the City's business and operations. This Agreement does not obligate the Parties to keep these hours and they can be amended without any revisions to this Agreement. VAO shall take all necessary precautions to assure the safety of the City's volunteers at the Shelter engaged in the performance of the Services, all equipment and supplies used in connection therewith, and all property of City or other parties that may be affected in connection therewith.

B. Fundraising.

1. VAO is a not-for-profit corporation organized under the laws of the State of Illinois. At all times during this Agreement the VAO shall be in good standing with the State of Illinois.

2. Subject to the terms of this Agreement, the City desires to engage the services of the VAO in fundraising activities on behalf of the Shelter and the City of Evanston.

3. Cancellation of Agreement. Any funds collected after the effective notice that Agreement has been canceled shall be deemed to be held in trust for the benefit of the City of Evanston without any deduction for costs or expenses. The City shall be entitled to recover all funds collected after the effective date of cancellation.

4. Description of respective obligations of fundraiser and charitable organization. In connection with VAO's fundraising activities on behalf of the City, the VAO shall have the right to use the City's good name and good will for the Shelter fundraising only. The VAO shall set the schedule for fundraising activities and notify the City if its cooperation is needed.

5. Regulatory Requirements. This Agreement is subject to the issuance of all necessary governmental permits, registrations and approvals with respect to fundraising activities contemplated by this Agreement in a timely manner by all governmental agencies having regulation over such activities. VAO shall not commence fundraising activities until compliance with all required permits, registrations and approvals.

6. Solicitation Activities and Consultation with the Board of Animal Control. In connection with all fundraising activities, VAO, its agents, servants and representatives shall not misrepresent the City's name and activities at the Shelter in any way. VAO, its agents, servants and representatives shall, in connection with all sales and solicitations clearly state that they represent the City of Evanston Animal Shelter and Adoption Center in connection with fundraising activities on its behalf.

7. Report. VAO shall provide the City at least every three (3) months with a list of contributions made during the three month time period, events or solicitation efforts made, and upcoming events that VAO will be conducting to fundraise for the Shelter. All donor information is considered confidential information which will be preserved and protected by the City in the event of a Freedom of Information Act request.

8. Funds raised by the VAO. If this agreement is terminated, funds raised by the VAO shall revert to the City of Evanston for the purposes of caring for the City's homeless and unwanted animals.

C. Independent Contractor. VAO's status shall be that of an independent contractor and not that of a servant, agent, or employee of City. VAO shall not hold VAO out, nor claim to be acting, as a servant, agent or employee of City except as provided for in this Agreement including but not limited to the fundraising component and animal care and service. VAO is not authorized to, and shall not, make or undertake any agreement on behalf of City without its written approval. Further, the VAO shall not be entitled to participate in any of the City's benefits, including without limitation any health or retirement plans. The VAO shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Contract. The City shall not be liable for taxes, Worker's Compensation, unemployment insurance, employers' liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the Independent

Contractor in performing Services under this Contract. All such costs shall be VAO's responsibility.

D. Conflict of Interest. VAO represents and warrants that no prior or present services provided by VAO to third parties conflict with the interests of City in respect to the Services being provided hereunder except as shall have been expressly disclosed in writing by VAO to City and consented to in writing to City.

E. Ownership of Documents and Other Materials. All originals, duplicates, Excel spreadsheets, PDF, and other documents or materials required to be furnished by VAO hereunder, including drafts and reproduction copies thereof, shall be and remain the exclusive property of City, and City shall have the unlimited right to publish and use all or any part of the same without payment of any additional royalty, charge, or other compensation to VAO. Upon the termination of this Agreement, or upon request of City, during any stage of the Services, VAO shall promptly deliver all such materials to City.

F. Payment. The VAO has no right or expectation of payment for the Services performed under this Agreement by the City.

G. Right to Audit. Any audit performed at the City's request will be paid for by the City. VAO shall for a period of three years following performance of the Services, keep and make available for the inspection, examination and audit by City or City's authorized agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by VAO, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by VAO is found to have been overstated, VAO shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City's expenses for and in connection with the audit respecting such invoice.

H. Covenant Not to Sue. VAO hereby covenants not to sue other otherwise bring any action in law or equity against the City, its elected officials, employees, or attorneys for any claims, loss, damage, expense, or liability of any nature whatsoever which VAO may sustain arising out of this Agreement and use of the City Shelter property.

I. Default and Remedies.

1. Notice of Default: In the event of failure by either party to substantially perform any material term or provision of this Agreement ("**Event of Default**"), the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required by Section P hereof identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

2. Cure of Default: Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within a 30-day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion.

3. Remedies not Exclusive: If an Event of Default occurs, which either party has not cured within the timeframe set forth in subparagraph B above, either party, at its option, may terminate this Agreement and/or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement.

4. No Personal Liability: This Agreement is executed by the undersigned authorized agent of VAO, not personally, but solely as authorized agent of VAO, and it is expressly understood and agreed by the parties hereto, that each and all of the covenants, undertakings, representations, warranties, and agreements herein made are made and intended, not as personal covenants, undertakings, representations, and agreements of the undersigned authorized agent or of the members of the board of the VAO in their individual capacities, but as the covenants, undertakings, representations and agreements of VAO, and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against said authorized agent or any partner, officer, director, shareholder, manager, board member or agent of VAO, or under any covenant, undertaking, representation, warranty, or agreement herein contained, either expressed or implied; all such personal liability, if any, being and is expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof. In the event VAO is in breach or default with respect to VAO's obligations or otherwise under this Agreement, the City shall look solely to VAO's property for recovery of any judgments from VAO.

J. Confidentiality. In connection with this Agreement, City may provide VAO with information to enable VAO to render the Services hereunder, or VAO may develop confidential information for City. VAO agrees to use its best judgment to treat as secret and confidential all such information whether or not identified by City as confidential.

K. Freedom of Information Act. Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/7(2), records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the VAO's control, the VAO shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the VAO shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, is applicable. Compliance by the City with an opinion or a directive from the Illinois Public Access Counselor or the Attorney General under FOIA, or with a decision or order of Court with jurisdiction over the City, shall not be a violation of this Section.

L. No Assignments or Subcontracts. VAO shall not assign or subcontract all or any part or its rights or obligations hereunder without City's express prior written approval. Any attempt to do so without the City's prior consent shall, at City's option, be null and void and of no force or effect whatsoever.

M. Compliance with Applicable Statutes, Ordinances and Regulations. In performing the Services, VAO shall comply with all applicable federal, state, county, and municipal statutes, ordinances and regulations, at VAO's sole cost and expense, except to the extent expressly provided to the contrary herein. Whenever the City deems it reasonably necessary for security reasons, the City may conduct at its own expense, criminal and driver history background checks on volunteers at the Shelter. VAO shall immediately reassign any such City volunteer who in the opinion of the City does not pass the background check.

N. Notices. Every notice or other communication to be given by either party to the other with respect to this Agreement, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by United States certified or registered mail, postage prepaid, addressed to the recipient as follows:

City of Evanston
Attn: City Manager
2100 Ridge Avenue
Evanston, IL 60201

City of Evanston
Attn: Corporation Counsel
2100 Ridge Avenue
Evanston, IL 60201

Evanston Animal Shelter Association
Attn: Vicky Pasenko and Alisa Kaplan
2310 Oakton Street
Evanston, IL 60202

O. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

P. Waiver. Any failure or delay by City to enforce the provisions of this Agreement shall in no way constitute a waiver by City of any contractual right hereunder, unless such waiver is in writing and signed by City.

Q. Severability. In the event that any provision of this Agreement should be held void, or unenforceable, the remaining portions hereof shall remain in full force and effect.

R. Choice of Law. The rights and duties arising under this Agreement shall be governed by the laws of the State of Illinois. Venue for any action arising out of or due to this Agreement shall be in Cook County, Illinois. The City does not waive tort immunity by entering into this Agreement.

S. Time. VAO agrees all time limits provided in this Agreement and any Addenda or Exhibits hereto are of essence to this Agreement. VAO shall continue to perform its obligations while any dispute concerning the Agreement is being resolved, unless otherwise directed by the City.

V. AMENDMENTS

This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

VI. INTEGRATION

This Agreement, with Exhibit A sets forth all the covenants, conditions and promises between the parties with regard to the subject matter set forth herein. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. This Agreement has been negotiated and entered into by each party with the opportunity to consult with its counsel regarding the terms therein. No portion of the Agreement shall be construed against a party due to the fact that one party drafted that particular portion as the rule of *contra proferentem* shall not apply.

In the event of any inconsistency between this Agreement, and the Exhibit, this Agreement shall control over the Exhibit. In no event shall any proposal or contract form submitted by VAO be part of this Agreement unless agreed to in a writing signed by both parties and attached and referred to herein as an Addendum, and in such event, only the portions of such proposal or contract form consistent with this Agreement and Exhibit hereto shall be part hereof.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have each approved and executed this Agreement on the later of the two dates listed below.

**EVANSTON ANIMAL SHELTER
ASSOCIATION, an Illinois
not-for-profit corporation**

By: 

Its: President

Date: 4/10/17

**CITY OF EVANSTON
an Illinois municipal corporation**

By: 

Its: City Manager

Date: 4-10-17

Approved as to form:
W. Grant Farrar
Corporation Counsel

By: 

EXHIBIT A

EVANSTON POLICE STANDARD OPERATING PROCEDURE MANUAL