



DATE: November 4, 2009

TO: Honorable Mayor and City Council Members

FROM: Economic and Community Development Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT FOR ANIMAL SHELTER AND ANIMAL CONTROL SERVICES, BUDGET APPROPRIATION, AND DIRECTION STAFF**

SYNOPSIS

Staff recommends that the City Council approve a one-year professional services agreement with North County Humane Society to provide animal sheltering and animal control services to the City in the total amount of \$788,670 (although staff does not support the increased cost, the City has no reasonable or alternative option at this time); approval of a budget appropriation in the amount of \$288,671 from the General Fund Unallocated Reserves to complete the funding for the agreement; direct staff to pursue alternative animal control services; and authorize the City Manager to execute the agreement.

BACKGROUND

The North County Humane Society ("NCHS") has provided animal sheltering and animal control services to the City of Oceanside ("City") since 1963 pursuant to a number of professional service agreements. The most recent professional services agreement was entered into in May of 2006, amended in June of 2008, and expired in July of 2009. Although the agreement provided for two remaining one-year extensions at the same compensation plus a Consumer Price Index ("CPI") increase, NCHS had requested to negotiate a new agreement in lieu of requesting an extension. Since July of 2009, the agreement has been extended administratively in accordance with the terms thereof while NCHS and the City have been negotiating the terms and conditions of a new agreement.

The current professional services agreement with NCHS was for two years, fiscal years 2006-07 and 2007-08 with three one-year options. NCHS exercised one of the options for fiscal year 2008-09, but elected not to exercise the second one-year option to extend the term of the agreement for fiscal year 2009-10 at approximately \$525,000 per year (the fiscal year 2008-09 amount of \$509,073 plus the increase in the Consumer Price Index of 3.2%). Per the administrative extension provision of the current agreement, the

02

City extended the term an additional four months and four days in the hopes of negotiating a new agreement with NCHS.

ANALYSIS

The basic underlying premise of an agreement for animal sheltering and animal control services is to provide a proactive, timely response to animal control issues and residents' concerns while providing for the humane treatment of all animals and maintaining a suitable, sanitary animal shelter capable of handling all public pound functions in accordance with applicable laws. In the past, NCHS has demonstrated the competence and professional qualifications necessary to perform all manner of professional animal sheltering and animal control services required by the prior agreements.

Under the current agreement NCHS provides the following full array of animal sheltering services and animal control services, including the prioritization of certain activities listed therein (e.g., addressing dangerous/vicious animals was a Priority One, whereas, addressing barking dog complaints was a Priority Four):

Animal sheltering services: included the housing and care of stray animals for the legal hold period; housing and care for animals under quarantine for the legal hold period; providing lost and found opportunities for the public; and housing and care for police and animal cruelty holds for the legal period.

Animal control services: included the following services prioritized as follows:

Priority One Calls: An immediate, essential emergency response during field service hours and within 20 minutes or to the best of their ability in the event of multiple emergency calls during non-field-service hours for the following:

- Any law enforcement agency requesting immediate assistance.
- Animal bite, where the animal is not contained.
- Any animal either known to be dangerous or vicious by previous determination in administrative hearing or one that is perceived to be a threat or menacing to those individuals reporting the event.
- Any animal, dead or alive, which is presenting an immediate hazard to humans, such as an animal in traffic lanes of a major thoroughfare or highway.
- Any school reporting an animal on its grounds, or in the immediate area.
- Any animal that is sick, injured, or in immediate danger.

Priority Two Calls: An immediate response, if not preempted by Priority One calls during field service hours, and within two hours during non-field-service hours:

- Any animal bite, where the animal is contained.
- Wild animal complaint when animal is in a residence or structure.

Priority Three Calls: Immediate response includes notices to both the violating party and the reporting party for education with or without an officer available to visit the site during the violation. An officer or their agent will always follow up within 48 hours. Repeated offences will be served as Priority One calls when staffing allows. An officer response will not be available between 8 p.m. and 6 a.m.

- Dog running at large and violation is in progress but not posing a threat to itself or the public.
- Barking dog complaint when the violation is in progress.

Priority Four Calls: An immediate response may be effected by the animal services phone representative to provide education and information and possibly referrals in the instance of wildlife rescue facilities and behavior or obedience referrals. An animal services officer will follow with a response no later than 48 hours following the service request for the following complaints:

- Dogs running at large when the violation is not in progress.
- Barking dog complaint when the violation is not in progress.
- Any observed or suspected abuse or neglect not currently in progress.
- Dead animal removal when the body is not posing a safety concern.
- Neighbor dispute involving animals.

Due to inaccurate prior accounting practices by NCHS and more recently, the severe economic downturn, leading to reduced donations, NCHS indicated they can no longer provide the levels of service at the compensation set forth in the prior agreement. Under the proposed terms of a new agreement NCHS has requested a significant increase in compensation together with a reduction in the level of services to be provided and an increase in response times (e.g., NCHS will no longer address barking dog complaints or wild animal-related occurrences).

To further exacerbate the situation, at this time there does not appear to be a viable third party alternative for animal sheltering and animal control services required by the State Mandates. The County of San Diego Department of Animal Services, which services the City of Carlsbad, has indicated that they cannot provide the required animal sheltering and animal control services to the City of Oceanside. Additionally, the Escondido Humane Society, which services the cities of San Marcos, Escondido and

Poway, has informed staff that they also do not have the capacity to shelter animals and provide animal control services to meet the requirements of the City of Oceanside.

Due to the City's severe budgetary limitations, staff informed NCHS that the City may not be in a position to pay the increased compensation for the level of service previously provided by NCHS. Staff asked NCHS to provide only the minimum level of animal sheltering and animal control services to comply with the statutory requirements imposed on municipalities by the State of California ("State Mandates"). The State Mandates are "impounding of dogs running at large" and providing a "pound system and rabies control program", which are broadly defined categories. Staff requested other service options such as 1) animal sheltering only and 2) animal sheltering together with animal control service that only addresses vicious dog and stray dog occurrences and complaints.

After lengthy discussions, NCHS would not submit proposals that would address the number of the different options requested by staff. As of this date, NCHS has submitted only one "limited service" agreement proposal. Unfortunately, the "limited service" scope of work proposal submitted by NCHS does not satisfy the State Mandates related to the broadly defined category of "impounding of dogs running at large". However, under the "limited service" agreement proposal, NCHS would provide most but not all of the animal sheltering services required by the State Mandates. NCHS would provide sheltering and related services (e.g., cleaning, feeding and veterinary care) for strays, injured animals and rabies impounding, but not services related to items such as impounding of dogs running at large and rabies reporting.

As for animal control services under the "limited service" agreement proposal, the City would need to provide the services required by State Mandates that the NCHS agreement does not afford. NCHS is only willing to provide animal control services that pertain to injured animals and cruelty to animal occurrences. NCHS informed staff that this type of animal control service is the basic "mission" of NCHS and is all that NCHS will provide under the "limited service" agreement. NCHS will not provide animal control services related to the other activities associated with the impounding of dogs found running at large (e.g., vicious dog complaints and picking up stray dogs), which the City considers a high priority.

Under the "full service" agreement, NCHS will basically provide the same level of animal sheltering and animal control services previously provided less addressing barking dog and wild animal control occurrences, together with an increase in response times. This would mean the City would need to address barking dog complaints and refer any wild animal occurrences to the County of San Diego. This additional workload would need to be under the supervision of one of the already budget-impacted City departments.

The term of the proposed agreement is for one-year and would be retroactive to July 1, 2009. The agreement is subject to a reopener clause by the City, which basically says that if there is a reduction in General Fund revenue during the term which is sufficient to require a reduction in overall City services, then the City may reduce payments due under the agreement. Accordingly, NCHS may institute a commensurate reduction in services in the event there is a reduction in payment. In addition, either party shall have the right to terminate the agreement, with or without cause upon providing ninety days prior written notice.

During the one-year term of the agreement, City staff will pursue other less costly alternatives to providing the animal sheltering and animal control services required by the State Mandates. Staff will look at providing such services through a formal Request for Proposal process, possibly contracting for some of the services while directly providing other services, and possibly providing all of the needed services "in-house" or in cooperation with other municipalities. Staff will also look at sources of potential sources of revenue that can be generated from providing some of the animal sheltering and/or animal control services that could offset some of the other costs (e.g., the dog licensing program, etc.).

FISCAL IMPACT

The total cost of the one-year agreement is \$788,670, of which \$175,053 has already been paid. The funds for the original agreement amount for Fiscal Year 2009-10 are included in the City's non-departmental operating budget Account No. 170180101.5395, which has an available balance of \$324,946. The difference between the new agreement cost per year of \$788,670 and the current agreement cost per year in the amount of \$500,000 results in a \$288,671 per year cost increase to the City. Although staff does not support the cost increase at this time, the City does not have a viable option and additional funding will be needed. Funding would need to be appropriated from the Unallocated General Fund Reserve, Account No. 101.3100.0001 and transferred to 170181101.5395 or additional positions will need to be eliminated from the Fiscal Year 2009-10 recently approved General Fund budget.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form. State laws requires that the City: (1) provide for impounding and disposition of dogs running at large; (2) maintain a pound system and rabies control program; and (3) provide for dog vaccination clinics. The City is authorized to establish a licensing and

fee structure to help fund performance of these obligations, and the City is authorized to contract with a humane society or other organization for fulfill these statutory obligations.

RECOMMENDATION

Staff recommends that the City Council approve a one-year professional services agreement with North County Humane Society to provide animal sheltering and animal control services to the City in the total amount of \$788,670 (although staff does not support the increased cost, the City has no reasonable or alternative option at this time); approval of a budget appropriation in the amount of \$288,671 from the General Fund Unallocated Reserves to complete the funding for the agreement; direct staff to pursue alternative animal control services; and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Douglas E. Eddow
Real Estate Manager



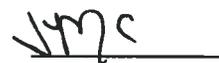
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager



Jane McVey, Economic & Community Development Director



Teri Ferro, Financial Services Director



CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: ANIMAL SHELTER AND CONTROL SERVICES

This Professional Services Agreement ("Agreement") is made and entered into this 4th day of November, 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter referred to as "CITY", and The NORTH COUNTY HUMANE SOCIETY AND S.P.C.A. INC., a California non-profit corporation, hereinafter referred to as "CONTRACTOR."

RECITALS

Whereas, CITY desires to obtain professional services from an independent contractor for the above named project;

Whereas, CONTRACTOR has submitted a proposal to provide professional services for the CITY in accordance with the terms set forth in this Agreement;

Whereas, CITY desires to contract with CONTRACTOR as an independent contractor and CONTRACTOR desires to provide services to CITY as an independent contractor;

Whereas, CONTRACTOR has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education, and expertise;

Whereas, CITY is interested in the CONTRACTOR continuing to provide animal shelter and animal control services for the CITY;

Whereas, CONTRACTOR has heretofore operated an animal shelter and performed animal control services for the CITY, and agrees to continue in the humane treatment and proper handling of animals;

Whereas, the purpose of entering into this Agreement is to ensure the proper, humane and efficient regulating of the handling, ownership, treatment and disposition of dogs cats and other domesticated animals, and to ensure the enforcement of laws, ordinances and regulations of the State of California and of the CITY concerning the

regulating, licensing, impounding and disposition of dogs, cats and other domesticated animals, within the CITY.

NOW THEREFORE, in consideration of the covenants, conditions and terms set forth herein, the parties hereto mutually agree as follows:

AGREEMENT

1.0 **SCOPE OF WORK.** The project is more particularly described as follows:

CONTRACTOR shall provide animal control services required by and in accordance with the laws, regulations, ordinances and codes of the State of California, County of San Diego and City of Oceanside as further limited by this Agreement. The professional services to be performed by CONTRACTOR pursuant to the terms and conditions of this Agreement shall consist of but not be limited to the following:

1.1 **Animal Sheltering.** The CONTRACTOR does hereby agree that it will provide the CITY with animal shelter services at 2905 San Luis Rey Road, Oceanside, California. CONTRACTOR shall provide the CITY with animal shelter services consistent with public pound functions of impounding injured animals, destroying unwanted animals, and disposing of dead animals. CONTRACTOR's animal shelter services include but are not limited to:

 a. The housing and care of stray animals for the legal hold period according to the laws of the State of California (e.g. five (5) day period).

 b. The housing and care for animals under quarantine for the legal hold period according to the laws of the State of California (e.g. ten (10) day period).

 c. Housing and care for police and animal cruelty holds for fifteen (15) days (ten (10) day legal hold period plus five (5) days if the animal is considered a stray).

 d. Provide lost and found opportunities to the general public for animals brought to the shelter.

 e. Provide for the euthanasia of animals, if warranted, once the applicable hold period is completed, having undertaken the duties provided in this Agreement and those of an animal shelter. The CITY acknowledges that once the legal hold period for any animal is over, the disposition of said animal is determined at the sole discretion of CONTRACTOR.

1.2 **Animal Sheltering Criteria.** The CONTRACTOR's animal sheltering services requirements include:

- a. Maintain a suitable and sanitary animal shelter in compliance with the standards described by the State of California and ordained by the CITY.
- b. Provide for the housing of animals in accordance with the laws of the State of California and City of Oceanside ordinances.
- c. Provide for the housing of animals obtained from and involved in law enforcement activities and animal cruelty situations for a period of ten (10) days. Any housing hereunder for longer period will be charged to the CITY at a rate of Thirty and No/100 Dollars (\$30.00) per day. Should the CITY request services above and beyond basic care and boarding as part of a police investigation (i.e., necropsy, bullet removal, etc.) the CITY will pay customary charges associated with said service and boarding.
- d. Feed, care for, and dispose of all animals coming into the possession of CONTRACTOR using safe and humane methods in accordance with the laws of the State of California and City of Oceanside ordinances.
- e. Provide for the animal shelter to be open for public service and operation during reasonable days and hours of operation similar to other comparable facilities in North San Diego County.
- f. Assume all expenses to maintain and operate said animal shelter and properly care for the animals.
- g. Manage the dog license program within the City of Oceanside to include:
 - (i) Maintaining files of current and expired dog licenses and the owners who live within the City of Oceanside for three (3) years.
 - (ii) Issue new and renew licenses to dog license applicants within the City of Oceanside.
 - (iii) Conduct follow-up enforcement of licensing and rabies vaccination of dogs within the City of Oceanside.
 - (iv) Provide dog owners with reasonable advanced notice of the need for license renewals and rabies vaccinations.
 - (v) Host monthly vaccination clinics at the animal shelter.

1.3. Animal Control Services (also referred to as Field Services). The CONTRACTOR shall humanely and efficiently enforce all applicable animal control laws, regulations, ordinances and codes of the State of California, County of San Diego and City of Oceanside (as of the date of this Agreement) pertaining to animal control with respect to the services set forth below. The CONTRACTOR does hereby agree that it will provide the CITY with the following animal control services in response to complaints generated by the public, law enforcement and CITY:

- a. Investigation and enforcement of animal cruelty laws and activities associated therewith.

- b. Picking up and caring for injured animals.
- c. Addressing dangerous animal situations.
- d. Monitoring dog bites and providing quarantine services.
- e. Supporting law and code enforcement officers in animal related situations.
- f. Patrolling for and impounding stray dogs.
- g. Enforcement of all current (as of the date of this Agreement) City of Oceanside ordinances related to animal control issues not otherwise set forth above.

1.4 Animal Control Criteria. The CONTRACTOR's animal control services requirements include:

a. The CONTRACTOR shall act in a professional capacity to assist the CITY. CONTRACTOR's work shall comply with all applicable laws, regulations and professional standards for such work. CONTRACTOR, as agent for the CITY has a duty to perform all work in accordance with all laws, regulations and requirements that are applicable to the CITY.

b. Contractor shall provide a reasonable number of Animal Control Officers and animal containment vehicles and equipment for the performance of the animal control services as set forth herein.

c. CONTRACTOR shall humanely and efficiently enforce all laws of the State of California and City of Oceanside ordinances pertaining to animal control regulations that are within the scope of CONTRACTOR's obligations under this Agreement. Any new law in effect after the date of this Agreement that requires increased services by CONTRACTOR will be reviewed by the parties and agreed to by the parties (including compensation) before said increased services are made a part of this Agreement.

d. CONTRACTOR's Animal Control Officers are authorized to issue criminal or administrative citations in violation of City of Oceanside and State of California animal control laws, and to issue notices regarding confinement and destruction of deceased or habitual offenders as provided by law. CONTRACTOR's Animal Control Officers shall prepare appropriate reports concerning a violation or violations, file such reports with applicable authority when necessary, and shall stand ready and available to testify in a court or administrative hearing when called upon to do so concerning said violation or violations.

e. CONTRACTOR shall be responsible for all expenses associated with the enforcement of the agreed upon services, together with all expenses incurred

in the relief of suffering animals. For cases involving cruelty to animals and police holds, CITY shall be responsible for expenses as set forth in Section 1.2c.

f. CONTRACTOR'S Animal Control Officers shall issue citations for violations of City of Oceanside and the State of California animal control laws and issue notices regarding confinement and destruction of deceased or vicious animals or habitual offenders as provided by law. They shall also prepare adequate reports concerning violations, filing such reports when necessary, and shall stand ready and available to testify in court when called upon to do so concerning violations.

g. The CONTRACTOR shall respond to calls for animal control services between the hours of 8:00 AM and 5:00 PM daily ("field service hours") according to the following three (3) priorities:

(i) *Priority One Calls:* An immediate, essential emergency response during field service hours for the following:

- Any law enforcement agency requesting immediate emergency assistance.
- Animal bite, where the animal is not contained.
- Any domestic animal either known to be dangerous or vicious by previous determination in administrative hearing or one that is perceived to be a threat or menacing to those individuals reporting the event.
- Any domestic animal, dead or alive, which is presenting an immediate hazard to humans, such as an animal in traffic lanes of a major thoroughfare or highway.
- Any domestic animal that is sick, injured, or in immediate danger.
- A domestic animal that is at immediate risk due to animal cruelty or neglect.

(ii) *Priority Two Calls:* An immediate response, if not preempted by Priority One calls during field service hours:

- Any domestic animal bite, where the animal is contained.
- Any dog running at large and a violation is in progress but the dog is not posing a threat to itself or the public.
- Any law enforcement agency requesting non-emergency assistance.
- Any animal that is not at immediate danger but requires follow-up regarding neglect or cruelty.
- Pick-up of a confined stray dog.

(iii) *Priority Three Calls:* An animal service officer will always follow up as soon as possible. Repeated offenses will be served as Priority One calls when staffing allows. An officer response will not be available between 5 p.m. and 8

a.m.

- Dog running at large when the violation is not in progress.
- Education calls.
- Special requests to address a specific area or neighborhood that needs early morning monitoring, provided that the issue falls under this Agreement. This will be done on a case-by-case basis.
- Non-emergency calls not defined above.

iv. After Hour Calls. An after hour duty officer shall provide emergency responses to Priority One calls during non-field services hours upon receipt of such a call from a City of Oceanside official. Non-field services are defined from 5:00 PM to 8:00 AM daily.

1.5. Citizens Complaints. CONTRACTOR shall attempt to resolve all citizen complaints concerning issues pertaining to animal control services provided by CONTRACTOR at the administrative and field office level initially. Complaints from citizens directed to the CITY shall be forwarded to CONTRACTOR for evaluation and investigation if necessary. Complaints not resolved shall be handled as follows:

a. An appropriate supervisor shall be assigned to investigate the circumstances surrounding the complaint. This shall include contacting the complaining party, witnesses and other concerned parties when necessary. A report shall be completed and the complaining party shall be notified of the disposition. The complaining party may elect to appeal this decision by requesting an administrative hearing with the CONTRACTOR. All concerned parties will be notified in writing of the date and time of the hearing.

b. Administrative hearings shall be held at the North County Humane Society and SPCA Animal Shelter. The Executive Director of CONTRACTOR shall sit as the CONTRACTOR's administrative hearing officer or may delegate these duties to supervisory personnel not involved with the case being heard. Reasonable effort shall be made to hold hearings at a date and time convenient to both parties. All concerned parties will be notified in writing of the date and time of the hearing.

1.6. Contractor Personnel. CONTRACTOR shall hire fit and proper personnel and staff to assist and carry out the duties and obligations of this Agreement with the CITY. In particular:

a. The CONTRACTOR shall have at all times during the existence of this Agreement a reasonable number of Animal Control Officers qualified under California Corporations Code Section 14502 capable of performing and enforcing the provisions of the Oceanside City Ordinance relating to dogs and other stray animals.

b. The Animal Control Officers hired by the CONTRACTOR shall be duly qualified animal control officers. They shall not carry handguns in the performance

of their duties.

c. Each Animal Control Officer shall complete, within one (1) year of date of hire or within one (1) year of the approval of this Agreement, a course in training related to the exercise of his/her powers, which course shall meet the minimum standards prescribed by the Commission on Peace Officer Standards and Training, as provided in California Penal Code Section 832.

d. The CONTRACTOR, its agents and employees shall treat the public with courtesy, tact, and due respect at all times in performing all duties and obligations under this Agreement.

e. In the event the CONTRACTOR does not perform the duties as set forth herein in a satisfactory manner, the CITY may give written notice to CONTRACTOR and CONTRACTOR shall thereafter perform such duties in a manner satisfactory to the CITY, in its reasonable discretion, or the CITY may terminate the Agreement with a thirty (30) day written notice to CONTRACTOR.

f. CONTRACTOR shall comply with personnel policies and procedures that conform to federal and state laws with respect to hiring and firing practices.

g. CONTRACTOR shall work closely with the CITY in performing work in accordance with this Agreement in order to receive clarification as to the result that the CITY expects to be accomplished by CONTRACTOR. The City Manager, under the authority of the City Council, shall be the CITY'S authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designees.

1.7 Services Provided by CITY. The CITY shall provide CONTRACTOR the following services, when applicable, to assist CONTRACTOR in performing required animal control functions under this Agreement:

a. Provide pre-prosecution legal advice to CONTRACTOR on all criminal matters related to CONTRACTOR providing animal control services as set forth in this Agreement.

b. If available, CITY shall provide one-half (1/2) page of space in the Oceanside Magazine or other applicable CITY publications in order to disseminate information concerning the animal control services performed by CONTRACTOR in accordance with this Agreement.

c. CITY will provide training on the issuance and process of administrative citations and other related law enforcement techniques.

d. CITY shall provide administrative citations booklets as necessary.

e. CITY shall process all administrative citations, including appeals.

f. CITY and its authorized agents shall have the right to enter upon the premises of the animal shelter at reasonable times to inspect the same to ascertain whether the premises are in a safe, healthy, and satisfactory condition, and to protect any and all rights of the CITY under the terms of this Agreement.

g. CITY agrees to perform fingerprinting services for humane and animal control officers of CONTRACTOR in connection with employment thereof by CONTRACTOR, provided CONTRACTOR pays CITY for all costs associated with said services.

2.0 TIMING REQUIREMENTS.

2.1 Time is of the essence in the performance of work under this Agreement and the following timing requirements shall be strictly adhered to unless otherwise modified in writing as set forth in Section 2.2. Failure by CONTRACTOR to strictly adhere to these timing requirements may result in termination of this Agreement by the CITY.

2.2 CONTRACTOR shall submit all requests for extensions of time for performance in writing to the CITY no later than ten (10) calendar days after the start of the condition that reportedly caused the delay, and not later than the date on which performance is due. The CITY shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond CONTRACTOR'S control.

2.3 For all time periods not specifically set forth herein, the CONTRACTOR shall respond in the most expedient and appropriate manner under the circumstances, by telephone, fax, hand delivery, or mail.

3.0 RECORDS AND REPORTS.

3.1 The CONTRACTOR shall keep and maintain accurate and complete financial records of any monies expended in relation to the performance of services pursuant to this Agreement in accordance with generally accepted accounting principles ("GAAP") and in a form acceptable to the CITY as determined in its reasonable discretion. These records will be made available to the CITY or to an auditor on behalf of the CITY upon request for the purpose of verifying the CONTRACTOR'S compliance with the terms of this Agreement. This Agreement and any such financial records shall be deemed to be a public record. Failure to comply with this requirement shall be a material breach of the Agreement and will subject this Agreement to termination by the CITY.

3.2 In addition to the financial reporting set forth in Subsection 3.1 above, which shall be provided on a quarterly and annual basis, the CONTRACTOR shall prepare monthly and annual reports to CITY in a form acceptable to the CITY as determined in its

reasonable discretion, which shall include but not be limited to: 1) animal shelter operations (as it pertains to this Agreement), including the number of stray animals impounded, number of days held at the animal shelter under this Agreement and their disposition; 2) all administrative citations processed; 3) all fees collected by CONTRACTOR in connection with this Agreement, including but not limited to licensing fees, impounding fees and redemption fees; and 4) animal control activities, including but not limited to number and type of animal control investigated. Said report shall be submitted with the monthly service invoice. Should the CITY be requested to furnish information to any other government agency, or pursuant to a request pursuant to the California Government Code Section 6254 et seq. the CONTRACTOR agrees to provide timely information that the CITY may need to meet such request as long as the request is within the scope of this Agreement.

3.3 The CONTRACTOR shall also maintain a complaint log containing the following information as a minimum: name, address and telephone number of the person registering the complaint; type of complaint; and the action taken by CONTRACTOR. The CONTRACTOR shall prepare a monthly report to CITY in a form acceptable to the CITY as determined in its reasonable discretion, covering the number of complaints by type (i.e. noise, dog running loose, vicious, cruelty, other, etc.), and the number of unresolved complaints that go to an administrative hearing. Said report shall be submitted with the monthly service invoice.

3.4 Further, CONTRACTOR shall prepare a monthly report in a form acceptable to the CITY as determined in its reasonable discretion, of revenue for all service charges, proceeds, licenses, impounds, pick-ups and quarantine fees, late payments, penalties and any other revenue related to the services provided under this Agreement. Said report shall be submitted with the monthly service invoice.

3.5 All records and information required to be kept by CONTRACTOR pursuant to this Agreement shall be kept for a minimum of at least three (3) years unless otherwise required by law to be kept for a longer period of time.

4.0 **CRITERIA AND STANDARDS.** All work by CONTRACTOR shall be performed in accordance with applicable city, state and federal laws, statutes and regulations. In the performance of its professional services, CONTRACTOR shall use the degree of care and skill ordinarily exercised by similar contractors in North San Diego County under similar conditions.

5.0 **INDEPENDENT CONTRACTOR.** CONTRACTOR's relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Manager. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement.

6.0 CITY BUSINESS LICENSE. Prior to the commencement of any work under this Agreement, the CONTRACTOR shall obtain and present a copy to the CITY either a City of Oceanside Business License or a written verification from the City of Oceanside Business License Division that a City of Oceanside Business License is not required for this Agreement.

7.0 INSURANCE RISKS/SECURITY.

7.1 Indemnity. CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the CONTRACTOR or its employees, agents, or others in connection with the execution of the scope of work covered by this Agreement, except only for those claims arising from the sole negligence or sole willful misconduct of the CITY, its officers, agents, or employees. CONTRACTOR's indemnification shall include any and all reasonable costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not, in connection with this Agreement. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees in connection with this Agreement.

7.2 Liability Insurance. CONTRACTOR shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

a. CONTRACTOR shall maintain the following minimum limits:

General Liability

Combined Single Limit per occurrence	\$1,000,000
General Aggregate	\$2,000,000

Automobile Liability

Combined Single Limit per occurrence	\$1,000,000
--------------------------------------	-------------

b. All insurance companies affording coverage to the CONTRACTOR shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the CONTRACTOR shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the CITY's City Attorney, concurrently with the submittal of this Agreement.

f. CONTRACTOR shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a termination of this Agreement.

g. Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

h. If CONTRACTOR fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. CONTRACTOR shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid; names of the insurer(s); and rate of interest. Said reimbursement and interest shall be paid by CONTRACTOR on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by CONTRACTOR to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

g. **Modification.** CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving CONTRACTOR sixty (60) days prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing in connection with the execution of the scope of work covered by this Agreement. CONTRACTOR also agrees to obtain any additional insurance required by CITY, in order to meet the requirements of this Agreement.

7.3 Workers' Compensation. Pursuant to California Labor Code Section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the California Labor Code which require every employer to

be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement. The certification shall be in accordance with the applicable portion of Section 7.2 of this Agreement.

8.0 **NO CONFLICT OF INTEREST.** The CONTRACTOR shall not be financially interested in any other contract which may create a conflict with the scope of work for this agreement. For the limited purposes of interpreting this section, the CONTRACTOR shall be deemed a "city officer or employee", and this section shall be interpreted in accordance with the California Government Code Section 1090. In the event that the CONTRACTOR becomes financially interested in any other contract which may create a conflict with this agreement, that other contract shall be void. The CONTRACTOR shall indemnify and hold harmless the CITY, under Section 7.0 above, for any claims for damages resulting from the CONTRACTOR'S violation of this Section.

9.0 **OWNERSHIP OF DOCUMENTS.**

9.1 All reports and documents prepared or provided by the CONTRACTOR under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONTRACTOR free and harmless from any claim arising from any use, other than the purpose intended, of the reports and documents, prepared or provided by the CONTRACTOR. CONTRACTOR may retain a copy of all material produced under this Agreement for the purpose of documenting their participation in this project.

9.2 Animal license information and data, including, but not limited to, animal owner identification and address and animal name, description, license type and expiration date, are the property of CITY and must be presented to the CITY in any reasonable document and computer format requested in writing by CITY. All such information must be provided to CITY within thirty (30) days of CITY'S written request. CITY does not retain any ownership of the specific computer hardware or software used to create or store such licensing data except to the extent that CITY funds were used to purchase such computer hardware or software program. If CITY requires software formatting which CONTRACTOR'S employees, cannot provide, CITY shall bear the costs of such formatting.

10.0 **COMPENSATION.**

10.1 CONTRACTOR shall collect and retain, as part of the compensation for this Agreement, all service charges, proceeds, licenses, impounds, pick-ups and quarantine fees, late payments, penalties and any other revenue generated as a result of this Agreement.

10.2 Funding from CITY's General Fund.

a. Total agreement compensation for the Twelve (12) month term shall be **Seven Hundred Eighty-Eight Thousand Six-Hundred Seventy and No/100 Dollars (\$788,670.00)**. CONTRACTOR shall submit monthly invoices in the amount of **Sixty-Five Thousand Seven Hundred Twenty-Two and 50/100 Dollars (\$65,722.50)** per month for each month of this Agreement.

b. CITY shall pay CONTRACTOR within thirty (30) days of receipt of invoice and required monthly reports as set forth in Section 3.0.

c. The parties recognize that the amount of funds ultimately available to the CITY's general fund is subject to the finalization of the annual budget from the State of California and the approval by the City Council of the City of Oceanside annual budget. Thus, notwithstanding the preceding language, the amount of funds available pursuant to this Section may vary or be subject to reduction as set forth in Section 11.2.

10.3 Other Revenue. CONTRACTOR shall be entitled to retain as additional compensation all fees collected by CONTRACTOR in connection with licensing, impounding and redemption of animals from the animal shelter.

11.0 TERM OF AGREEMENT. The term of this Agreement shall be for the period of **Twelve (12) months** commencing **retroactive to July 1, 2009** and terminating **June 30, 2010**.

11.1 Administrative Extension. CITY retains the right to extend this Agreement for a period of one hundred twenty (120) days in order to finalize a new agreement with CONTRACTOR or to provide for a transition period to a new contractor. CITY may exercise this right by providing written notice at any time up to and including the final day of the term shown in Section 11.0. Such extension shall be under the existing terms and conditions. In the event the parties cannot agree upon a new agreement, either party shall have the right to terminate as herein after provided. However, in the event the parties execute a new Agreement or extension, the terms and conditions of that Agreement shall be made retroactive to the termination of this Agreement.

11.2 Re-opener. This Agreement shall be subject to reopener by the CITY as set forth herein.

a. Based on changes in federal and state law impacting the CITY's continued ability to provide the funds set forth in this Agreement.

b. Events that subject the CITY to a "significant reduction" in the funding available to its general fund. A significant reduction in General Fund revenues is defined as any loss of revenue sufficient to require a reduction in CITY services.

c. The CITY shall not re-open this Agreement more than once per year

for the purposes set forth in Subsection b above. Should this Agreement be re-opened by the CITY, not less than ninety (90) days notice shall be provided to CONTRACTOR advising it that the CITY has or expects to suffer a significant revenue loss and indicating how much the City Manager proposes to reduce payments to CONTRACTOR. During the ninety (90) days prior to the implementation of the decrease in payments to CONTRACTOR, the parties shall negotiate in good faith to arrive at a new agreement regarding the particular services that may be reduced in accordance with the proposed reduction in payments. The parties agree that any reduction in funding to CONTRACTOR may result in a commensurate reduction in CONTRACTOR's obligations under this Agreement.

d. The City Manager may delegate to the Real Estate Manager, the authority to re-open this Agreement for the purposes set forth in this Section and to effectuate any funding reductions or changes required in accordance with the terms of this Agreement.

12.0 TERMINATION OF AGREEMENT.

12.1 If either party ("Demanding Party") has a good faith belief that the other party ("Defaulting Party") is not complying with the terms of this Agreement, the Demanding Party shall give written notice of the default (with reasonable specificity) to the Defaulting Party and demand the default to be cured within ten (10) days of the notice.

If the Defaulting Party fails to cure the default within ten (10) days of the notice, or, if more than ten (10) days are reasonably required to cure the default and the Defaulting Party fails to give adequate assurance of due performance within ten (10) days of the notice, the Demanding Party may terminate this Agreement upon written notice to the Defaulting Party.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with the Compensation as set forth in Section 10.0. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination.

12.2 Notwithstanding anything else herein to the contrary, either party shall have the right to terminate this Agreement, with or without cause, by providing the other party with ninety (90) days prior written notice.

13.0 ASSIGNMENT AND DELEGATION. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. Consent by the CITY to one assignment shall not be deemed to be consent to any subsequent assignment.

13.1 Permitted Assignments and Delegations. Notwithstanding anything to the contrary contained in this Section, CONTRACTOR may enter into any of the following assignments without the CITY's prior written consent: 1) CONTRACTOR may assign its interest in the Agreement to a non-profit corporation, partnership, limited liability company, or limited partnership, which results from a merger, consolidation or other reorganization of CONTRACTOR, provided CONTRACTOR's underlying philosophy of providing animal control services and animal sheltering services remains the core objective of the newly formed non-profit entity.

13.2 Customary Services. CONTRACTOR shall be permitted without the CITY's prior written consent to enter into agreements with third party providers of services that are customary in the industry in assisting CONTRACTOR carry out its day-to-day operations (e.g., changing a contractor who provides food to the animal shelter).

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

14.0 ENTIRE AGREEMENT. This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

15.0 INTERPRETATION OF THE AGREEMENT. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

16.0 AGREEMENT MODIFICATION. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

17.0 DISPUTES. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in

addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

18.0 NOTICES. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

CITY OF OCEANSIDE
Property Management Division
300 North Coast Highway
Oceanside, CA 92054

To CONTRACTOR:

NORTH COUNTY HUMANE SOCIETY
AND S.P.C.A.
Executive Director
2905 San Luis Rey Road Road
Oceanside, CA 92054

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

19.0 SIGNATURES. The individuals executing this Professional Services Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Professional Services Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures this ____ day of _____, 2009.

“CITY”

CITY OF OCEANSIDE,
a municipal corporation

By: _____
Peter A. Weiss, City Manager

APPROVED AS TO FORM

By: *Barbara A. Hamilton, ASST.*
City Attorney

“CONTRACTOR”

NORTH COUNTY HUMANE SOCIETY & S.P.C.A.,
a California non-profit corporation

By: *Conrad Herring*
Name: CONRAD HERRING
Title: BOARD President

By: *Julie Bank*
Name: Julie Bank
Title: Executive Director/BO Member

NOTARY ACKNOWLEDGMENT OF CONTRACTOR MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

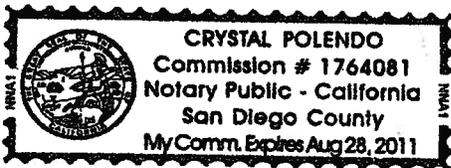
State of California

County of San Diego }

On Oct. 22, 2009 before me, Crystal Polendo, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Conrad Herring and Julie Bank
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: City of Oceanside Professional Services Agreement
Document Date: NOV. 4, 2009 Number of Pages: 17
Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Conrad Herring
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
Signer Is Representing: _____


Signer's Name: Julie Bank
 Individual
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____
Signer Is Representing: _____
