

STAFF REPORT



ITEM NO. 16

CITY OF OCEANSIDE

DATE: June 28, 2006

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT: **APPROVAL OF A TWO-YEAR PROFESSIONAL SERVICES AGREEMENT WITH NORTH COUNTY HUMANE SOCIETY TO PROVIDE ANIMAL CONTROL SERVICES**

SYNOPSIS

Staff recommends that the City Council approve a two-year professional services agreement in the amount of \$995,256 with North County Humane Society (NCHS) to provide animal control services to the City, and authorize the City Manager to execute the agreement.

BACKGROUND

NCHS has provided animal control services for the City since 1963 and has demonstrated the competence and professional qualifications necessary to continue to perform all manner of professional services and duties required by the agreement.

ANALYSIS

The basic precept of the animal control agreement is to provide a proactive, timely response to animal control issues and residents' concerns while providing for the humane treatment of all animals. NCHS will maintain a suitable, sanitary animal shelter capable of handling all public pound functions. NCHS shall provide a reasonable number of duly qualified Animal Control Officers and animal containment vehicles necessary to provide the agreement-required field services which include an after-hours duty officer to provide emergency responses during all non-field-service hours. Animal Control Officers shall respond to calls for services according to the following four priorities:

Priority One Calls: An immediate, essential emergency response during field-service hours within 20 minutes, or to the best of their ability in the event of multiple emergency calls during non-field-service hours. Calls for immediate assistance from a law enforcement agency or when there is an animal bite, where the animal is not contained, are examples of priority one calls.

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. An example of a priority two call is an animal bite, where the animal is contained.

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. Dogs running at large which are not posing a threat and barking dog complaints when the violation is in progress are examples of priority three calls.

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 up with a response no later than 48 hours following the service request. Barking dog complaints, when the violation is not in progress, and neighbor disputes involving animals are types of priority four calls.

The term of the agreement is for two years, with three City-controlled one-year extensions. The agreement cost is \$497,628 per year. Cost of each one-year extension shall be \$497,628 adjusted by 100 percent of the percentage change in the San Diego area "All-Urban Consumer Index."

The agreement is subject to a reopener clause by the City. If a reduction in General Fund revenue occurs which is sufficient to require a reduction in City services, then the City may reduce agreement payments. NCHS may institute a commensurate reduction in services while there is a reduction in agreement payments.

Staff and NCHS will continue to negotiate several long-term issues affecting animal control costs including NCHS's upgrade of their phone system, vehicle fuel purchase through the City and increasing agreement-related revenue to maintain or reduce the City's level of financial commitment to animal control services.

The proposed professional services agreement is provided in Attachment 1 .

FISCAL IMPACT

The total cost of the agreement is \$995,256 for the 24-month term and shall be paid in 24 monthly installments. The funds for the contract are included in the City's non-departmental operating 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.

RECOMMENDATION

Staff recommends that the City Council approve a two-year professional services agreement in the amount of \$995,256 with North County Humane Society to provide animal control services to the City and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:



Gary P. Gurley
Senior Property Agent



Barry E. Martin
Interim City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Assistant to the City Manager

Peter Weiss, Public Works Director

Douglas E. Eddow, Real Property Manager







CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: ANIMAL CONTROL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this day of MAY 31, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and The NORTH COUNTY HUMANE SOCIETY AND S.P.C.A. INC., hereinafter designated as "CONTRACTOR."

RECITALS

- A. CITY desires to obtain professional services from an independent contractor for the above named project and;
- B. CONTRACTOR has submitted a proposal to provide professional services for the CITY in accordance with the terms set forth in this Agreement and;
- C. CITY desires to contract with CONTRACTOR as an independent contractor and CONTRACTOR desires to provide services to CITY as an independent contractor and;
- D. 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 and;
- E. CITY is interested in the CONTRACTOR continuing to provide animal control services for the CITY and;
- F. CONTRACTOR has heretofore operated an animal shelter for the CITY, and agrees to continue in the humane treatment and proper handling of animals and;
- G. 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 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.

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NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

CONTRACTOR shall provide all 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.

1.1 **PROFESSIONAL SERVICES PROVIDED BY CONTRACTOR.** The professional services to be performed by CONTRACTOR shall consist of but not be limited to the following:

A. ANIMAL SHELTER. The CONTRACTOR does hereby agree that it will provide the CITY with animal shelter services at 2905 San Luis Rey Road, Oceanside, California, undertaking the duties herein assumed and those of a Humane Officer and will plan, implement and carry out a program of animal control within the CITY, including but not limited to:

1. Provide the CITY with animal shelter services including all public pound functions of picking up injured animals, destroying unwanted animals, and disposing of dead animals. All animals coming into possession of the CONTRACTOR shall be fed, cared for, treated and disposed of in accordance with State, County and City laws, regulations and Codes, and in accordance with safe and humane standard industry methods. The CONTRACTOR shall not knowingly release any injured or sick animal to any person without a medical waiver. The CONTRACTOR shall dispose of the carcasses of dead animals in a lawful manner.

2. Maintain a suitable and sanitary animal shelter in compliance with the standards described by the State of California and ordained by the CITY.

3. Provide for the quarantine of biting animals in accordance with the provisions of the laws of the State of California and the Oceanside City Code.

4. Provide for the animal shelter to be open for public service and operation for a minimum of 9 a.m. and 5 p.m., Tuesday through Sunday, excluding holidays. The NCHS & SPCA may elect to provide public service beyond the minimum hours of operation.

5. Assume all expenses of said shelter and all expenses incurred in the relief of animals from suffering.

ANIMAL CONTROL SERVICE AGREEMENT

B. Animal Control Services. The CONTRACTOR shall humanely and efficiently enforce all laws, regulations, ordinances and codes of the State of California, County of San Diego and City of Oceanside pertaining to animal regulation.

1. **Responding to wild animal complaints, including sea mammal rescue, are beyond the scope of this agreement.** CONTRACTOR shall refer all request for services concerning wild animals to the appropriate state, county or private agency which has the required expertise to deal with the complaint. CONTRACTOR shall assist as noted under priority two responses.

2. The CONTRACTOR shall provide a reasonable number of Animal Control Officers and animal containment vehicles to provide field services necessary for the enforcement of all terms and conditions of this Agreement.

- An after hours duty officer shall provide emergency responses during all non-field services hours.

3. The CONTRACTOR shall respond to calls for services according to the following four priorities:

- **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.

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- **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 affected 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:

- Dog 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.

4. CONTRACTOR'S Animal Control Officers shall issue citations for violations of City and State 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.

5. USE OF ADMINISTRATIVE CITATION. CONTRACTOR'S Animal Control Officers may use the City's administrative citation as an option, when appropriate. CONTRACTOR shall work within policy guidelines for the use of the administrative citation established by the City Attorney and shall adopt protocols consistent with the intent of this process.

6. The CONTRACTOR shall assume all expenses of enforcement of said laws, together with the expenses incurred in the relief of suffering of animals and in restraining animals from trespass.

7. Through appropriate means, bring responsible ownership and animal regulation laws to public attention.

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C. Citizens Complaints. CONTRACTOR shall attempt to resolve all citizen complaints concerning animal control issues 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:

1. 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.
2. Administrative hearings shall be held at the North County Humane Society Animal Shelter. The Executive Director of the North County Humane Society 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.

D. 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:

1. The CONTRACTOR shall have at all times during the existence of this agreement a Humane Officer qualified under California Civil Code Section 607(f) capable of performing and enforcing the provisions of the Oceanside City Code relating to dogs and other stray animals.
2. The Humane Officer and 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.
3. The Humane Officer and Animal Control Officers shall complete, within one year of adoption of this contract, 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 Penal Code Section 832.
4. The CONTRACTOR and 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.

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1.1.1 In the event the CONTRACTOR does not perform the duties herein prescribed in a satisfactory manner, the CITY thereof will give notice and the CONTRACTOR shall thereafter perform such duties in a manner satisfactory to the CITY or the CITY may withdraw from the Agreement with a 30-day notice.

1.1.2 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.

1.1.3 In compliance with Government Code Section 7550, the CONTRACTOR shall include a separate section in the specifications, which contains a list of the names of all subcontractors and dollar amounts of all subcontracts under the CONTRACTOR for this Agreement. The CONTRACTOR shall also list the amount of compensation to be received from the CITY under this Agreement.

1.1.4 CONTRACTOR shall carefully examine all information relating to the Agreement as often as necessary to become acquainted with the Agreement and all conditions, which could reasonably be discovered that effect the Agreement. This provision shall include visits to a particular site or location where applicable.

1.1.5 Prepare and submit to the CITY, reports, plans, specifications and any other documents required in this agreement in the time and manner set forth herein.

1.2 SERVICES PROVIDED BY CITY. The CITY shall provide CONTRACTOR the following services, when applicable, to performing required animal control functions under this agreement:

1.2.1 Provide legal advice and representation to the CONTRACTOR on all matters arising out of the CONTRACTOR's enforcement of the terms and conditions of this agreement. This includes providing all legal advertising, mailings, and postings when required.

1.2.2 Provide access to all necessary public records and documents and furnish one copy of such documents if requested.

1.2.3 Obtain all necessary permits from other regulatory agencies. CONTRACTOR shall participate in the completion of such forms but CITY will submit these and pay for any applicable fees.

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1.2.4 CITY shall provide one-half page of space in the Oceanside Quarterly magazine and other applicable CITY publications in order to disseminate information concerning the animal control services performed by CONTRACTOR in accordance with this Agreement.

1.2.5 CITY shall provide administrative citations booklets as necessary.

1.2.6 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.

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, and the assessment of damages against the CONTRACTOR for delays.

2.2 CONTRACTOR shall submit all requests for extensions of time for performance in writing to the CITY no later than ten calendar days after the start of the condition, which 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 either telephone, fax, hand delivery, or mail.

3.0 RECORDS AND REPORTS.

3.1 The CONTRACTOR shall keep and maintain accurate records pertaining to its duties under this agreement. 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.

3.2 The CONTRACTOR shall prepare a suitable monthly report to CITY covering animal shelter operations including the number of animals picked up, number of days held at the animal shelter under this agreement and their disposition. Report shall be submitted with the monthly service invoice. In addition, the City Manager will require an annual report of patrol activities. Should the CITY be requested to furnish information to any other government agency, or pursuant to a request pursuant to Government Code Section 6254 et seq. the CONTRACTOR agrees to provide timely information that the CITY may need to meet such request.

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3.3 The CONTRACTOR shall 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; action taken by CONTRACTOR. The CONTRACTOR shall prepare a suitable monthly report to CITY covering the number of complaints by type, i.e. noise, dog running loose, vicious, cruelty, other, etc. and number of unresolved complaints. Report shall be submitted with the monthly service invoice.

3.4 CONTRACTOR shall prepare a monthly statement of revenue for all service charges, proceeds, licenses, impounds, pick-ups and quarantine fees, late payments, penalties and any other revenue related to Animal Control Services provided under this agreement. Report shall be submitted with the monthly service invoice.

4.0 **CRITERIA AND STANDARDS.** All work shall be performed in accordance with applicable CITY, State and Federal Codes and criteria. In the performance of its professional services, CONTRACTOR shall use the degree of care and skill ordinarily exercised by CONTRACTOR 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 Business License Division that a City Business License is not required for this Agreement.

7.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code Section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the 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 that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance with **Sections 8.4 through 8.8** of this Agreement.

8.0 **LIABILITY INSURANCE.**

8.1 CONTRACTOR shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

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9.0 CONTRACTOR'S INDEMNIFICATION OF CITY.

9.1 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 or related to the conduct of the CONTRACTOR or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except only for those claims arising from the sole or active negligence or sole willful conduct of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all 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. 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.

9.2 CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

9.3 CONTRACTOR'S duty to indemnify and hold harmless shall not include any claims or liability solely arising from the established active negligence or willful misconduct or City, its agents, officers or employees. Notwithstanding anything in this agreement to the contrary, this **Section 9** shall survive the termination of the Agreement.

10.0 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 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 9** above, for any claims for damages resulting from the CONTRACTOR'S violation of this Section.

11.0 OWNERSHIP OF DOCUMENTS.

11.1. 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.

11.2 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

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reasonable document and computer format requested in writing by CITY. All such information must be provided to CITY within 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.

12.0 COMPENSATION.

12.1 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.

12.2 Funding from CITY's General Fund.

- A. Total agreement compensation for the Twenty-four month term shall be **Nine Hundred Ninety-five Thousand Two Hundred Fifty-six Dollars (\$995,256.00.)** CONTRACTOR shall submit monthly invoices in the amount of **Forty-one Thousand Four Hundred Sixty-nine Dollars (\$41,469.00) per month** for each month of this agreement.
- B. CITY shall pay CONTRACTOR within 30 days of receipt of invoice and required monthly reports, **Section 3.**
- 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 and other CITY resources. Thus, notwithstanding the preceding paragraphs, the amount of funds available pursuant to this section may vary or be subject to reduction as set forth in Section 13.3.

13.0 TERM OF AGREEMENT. The term of this Agreement shall be for the period of **Twenty-four (24) months** commencing **July 1, 2006** and terminating **June 30, 2008.**

13.1 Extension Options. The CONTRACTOR may request extension of the term of this Agreement for **Three (3)** additional one year periods under the terms and conditions of this Agreement, except compensation, which will be adjusted according to §13.1. B. and provided that the CONTRACTOR is not in default of this Agreement.

- A. The CONTRACTOR may request an extension provided that written notice from the CONTRACTOR is received by the City Manager no sooner than **180 days and not later than 90 days** prior to the expiration of the term of this Agreement. Upon receipt of CONTRACTOR's written request for extension, the City Manager shall respond to CONTRACTOR,

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in writing, within 60 days of receipt of said written request for extension with his/her determination to either accept or reject CONTRACTOR's request for extension. The City Manager has full authority to reject any such request. Acceptance of the extension request requires City Council approval and that approval shall be based solely upon the discretion of the City Council. City Council approval of one Agreement extension does not obligate the City Council to approve a subsequent CONTRACTOR requested extension.

- B. Extension compensation shall be adjusted by 100% of the percentage change in the Consumer Price Index (CPI) for the twelve-month period ending December 31st of the preceding calendar year. The time period used to determine the CPI change for the extensions shall be January 1, 2007 through December 31st, 2007 for the first extension, January 1, 2008 through December 31st, 2008 for the second extension and January 1, 2009 through December 31st, 2009 for the third extension.
- C. The index used shall be the San Diego area "All-Urban Consumer Index". If this index ceases publication, the CITY and CONTRACTOR shall mutually agree on a replacement index.

13.2 **ADMINISTRATIVE EXTENSION.** CITY retains the right to extend this Agreement for a period of 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 13**. Such extension shall be under the existing terms and conditions. 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.

13.3 **REOPENER.** 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 them that the CITY has or expects to suffer a significant revenue loss and indicating how much the City Manager

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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 Director, Public Works 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.

14.0 TERMINATION OF AGREEMENT.

14.1 CITY retains the right to terminate this agreement, with or without reason, by providing CONTRACTOR 60 days written notice.

14.2 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 **Section 12**. 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.

15.0 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.

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

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16.0 **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.

17.0 **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.

18.0 **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.

19.0 **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
CITY MANAGER
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

TO CONTRACTOR:

NORTH COUNTY HUMAN E SOCIETY
AND S.P.C.A.
EXECUTIVE DIRECTOR
2905 SAN LUIS REY 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.

ANIMAL CONTROL SERVICE AGREEMENT

20.0 SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this 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 _____, 2007. 6

NORTH COUNTY HUMANE SOCIETY & S.P.C.A.

CITY OF OCEANSIDE

CONTRACTOR

CITY

BY: 
SIGNATURE _____

BY: _____
CITY MANAGER

WARREN COX

NAME/TITLE _____


APPROVED AS TO FORM:
CITY ATTORNEY

BY: _____
SIGNATURE

NAME/TITLE

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

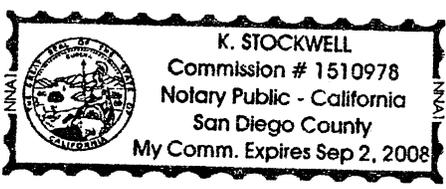
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On May 31, 2006 before me, K Stockwell, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Stanley Warren Cox
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is 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.



WITNESS my hand and official seal.
[Signature]
Signature of Notary Public

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: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

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

Signer Is Representing: _____

