

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 property 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 doges 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
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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.

HumaneSocietyProfessionalServicesAgmt11-04-08Final(fullservice)

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.

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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: *Paula Samiller*, #857
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

personally appeared Conrad Herring and Julie

Bank.

who 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.

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: _____