

RESOLUTION NO. 4025

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE
A "SHELTERING SERVICES AGREEMENT" BETWEEN THE CITY AND
THE SOCIETY FOR THE PREVENTION OF CRUELTY
TO ANIMALS (SPCA) OF MONTEREY COUNTY**

WHEREAS, City has an immediate need to obtain shelter services; and

WHEREAS, City has performed an expedited survey of available service providers, and has determined that the Society for the Prevention of Cruelty to Animals of Monterey County (SPCA) offers the desired quality services at a competitive cost per animal; and

WHEREAS, Society has indicated its willingness to provide City with the desired services; and

WHEREAS, as one of the side-benefits of the proposed service agreement, Society and City shall engage in a number of outreach activities in an effort to educate the public on animal needs thus reducing the need (and cost) for reactive animal control and sheltering services.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Soledad that the "Sheltering Services Agreement" between the City and the Society for the Prevention of Cruelty to Animals of Monterey County, a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein, is hereby approved, and the City Manager is hereby authorized and directed to execute the same on behalf of the City of Soledad.

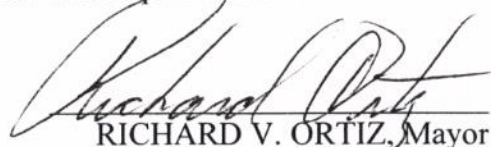
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 20th day of June 2007, by the following vote:

AYES, and in favor thereof, Councilmembers: Martha Camacho, Juan Saavedra, Pat Stephens, Mayor Richard Ortiz

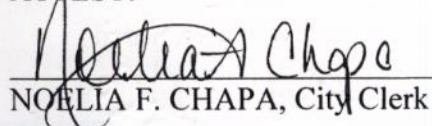
NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmember: Mayor Pro Tem Christopher Bourke


RICHARD V. ORTIZ, Mayor

ATTEST:


NOELIA F. CHAPA, City Clerk

SHELTERING SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Soledad hereinafter referred to as "City", which has duly executed, pursuant to resolution or ordinance, a counterpart hereof and the Society for the Prevention of Cruelty to Animals of Monterey County hereinafter referred to as "Society".

WHEREAS, City is required by state law to provide for the capture, impoundment, sheltering and disposition of certain non-human vertebrates within the corporate limits of the City and City has qualified personnel to perform field services but does not own a shelter, City desires to contract for the humane sheltering, impoundment and disposition of said non-human vertebrates, including stray and unwanted animals, pursuant to the provisions of applicable California State Statutes, Agency Rules, County Ordinances, Judicial Orders and City Codes; and

WHEREAS, Society owns and operates an animal shelter and represents itself as being willing and able to provide the services required by City and to carry out the provisions of the aforesaid statutes and City Codes pertaining to the shelter, impoundment, humane care, and disposition of stray and unwanted animals covered by said statutes, rules, ordinances, judicial orders and codes; and

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and provisions herein contained, the parties hereto agree as follows:

1. DEFINITIONS. The following definitions shall apply to this Agreement:

- a. Terms defined in the City's codes shall have the meanings described in said Codes except for the following:
 - i. "Animal" means all non-human vertebrates;
 - a) "Domestic Animal" means animals that are habituated to live in or about the habitations of humans and includes livestock.
 - b) "Exotic Animal" means animals not native to California and not commonly habituated to live in or about the habitations of humans.
 - c) "Wild Animal" means animals native to California, which retain their wild nature and which have not been held in captivity.
 - ii. "Billable sheltering period" means that period of time which statute, ordinance, code, judicial order or governmental agency rule mandates for the sheltering of an animal, or one day, whichever time period is greater;
 - iii. "Proactive services" means those services provided by Society for the purpose of reducing the City's need for sheltering services by keeping animals in homes and out of shelters. Such services include, but shall not be limited to, humane education, micro chipping, behavioral counseling, collaborative ordinance promulgation, and vaccination;
 - iv. "Reactive services" means the sheltering of animals in need of sheltering services;
 - v. "A nuisance animal control operator" means a private individual or other non-governmental entity that removes animals from structures or other areas for a fee;
 - vi. "Field services" means stray animal pickup, owned animal pickup, injured

Exhibit A

animal pickup, animal nuisance and animal complaint investigations and similar services. The term field services do not include cruelty investigation or any of the activities included in paragraph 11 herein entitled, Rabies Investigation.

2. TERM AND TERMINATION. This Agreement shall take effect on July 1, 2007 and shall remain in full force and effect for twelve (12) months, ending on June 30, 2008. The parties believe that the best interests of the animals would be served if this Agreement for sheltering services were renewable annually for a period of ten (10) years as of fiscal year 2007-2008. Therefore, this Agreement shall be renewable annually for a period of ten (10) years so long as City and Society agree upon fees and terms within sixty (60) days of the expiration of each annual agreement and so long as measurable progress is being made in reducing the need for reactive animal control and sheltering services within City's jurisdiction.

In addition, either party may terminate this Agreement by presentation to the other party hereto a written notice of said termination thirty (30) days prior to the effective date of said termination.

Notwithstanding any other provision to the contrary, failure to provide humane care, handling, or treatment of animals shall constitute a material breach of this Agreement that must be remedied within 24 hours of written notice delivered to the authorized representative of the breaching party. Failure to remedy such a breach of contract within the 24 hours shall terminate this Agreement.

In the event of termination, regardless of the type of termination, the parties shall fulfill their obligations to the other party up to and including the day of termination.

3. SERVICES TO BE PERFORMED BY SOCIETY.

a. Society shall operate and maintain at 1002 Monterey-Salinas Highway, Monterey, California, an animal shelter in a secure and sanitary manner adequate for the confinement, treatment, and disposal of all animals which may be delivered to it from the City, and, except as otherwise agreed, shall furnish at its sole expense all supervision, labor, animal food, tools, supplies and other things necessary for satisfactory performance of the services herein agreed to be provided. Society shall maintain on its property all animal food, tools, supplies, etc. and said items may not be removed from Society's property without authorization of the Society's Executive Director or his/her designee.

b. Society shall provide the means to accept during normal business hours, and without charge to the person delivering the animal, all stray, abandoned and surrendered dogs, cats, and other domestic and exotic animals delivered to the animal shelter by City's Animal Control or Police Department personnel. Society shall also provide the means to accept during its normal business hours, and without charge to the person delivering the same, all live, stray or abandoned dogs, cats, and other domestic or exotic animals delivered to the animal shelter from within the corporate limits of City by the City's residents or others.

c. Business hours shall consist of not less than six (6) hours each day, Monday through Friday, and not less than five (5) hours each Saturday and Sunday, but need not otherwise include

holidays observed by the City (listing of City's observed holidays to be provided to Society). The Society shall also have the option to close for business up to an additional four (4) days per year to facilitate staff training needs and shall notify City in writing two weeks prior to any such closure.

d. Society shall require all such persons who deliver domestic and exotic animals to give their names and present home and post office address and, if they deliver a stray, abandoned, or injured animal, to identify the place where the animal involved was found.

e. Any animal taken into custody by an employee of City shall be delivered to the Society at its shelter in a humane manner or held in a humane way at City's designated holding area until it is delivered to the Society or returned to its owner. Society shall maintain a listing for the public of all stray dog/cat-holding facilities in the County, including location, telephone number and hours of operation, in accordance with state and local laws.

f. Society shall maintain a quarantine section within the animal shelter facility for the confinement, observation and care of any animals suspected of rabies, or any animal which has bitten or otherwise exposed any person to rabies, and shall accept, care for and dispose of any such animal delivered to the facility in accordance with instructions of the Monterey County Health Officer as listed in the Health Department's Rabies Protocols (updated copies to be provided to Society). If kennel or cage space is not available in the isolation/quarantine sections of the shelter facility, Society will consult with the County Health Officer who shall determine how said animal(s) shall be housed and isolated. If directed by the City or the Monterey County Health Officer that the brain of an animal must be tested for rabies, Society shall euthanize the animal and turn over the carcass to County and/or City personnel who will remove the brain and deliver it to the County Health Department Laboratory for testing. Regardless of the test results, City shall be responsible for the disposal of the remains.

g. With respect to domestic livestock animals and exotic animals, Society shall use its best efforts to provide these animals with shelter and care, however, the parties acknowledge that Society is not equipped to handle significant numbers of such animals and may decline to provide services if Society in its sole discretion believes that it is unable to provide for the humane sheltering and care for such animals in a cost effective manner. In the event that Society must decline such animals, Society shall cooperate with City to assist City in locating other sheltering and care options for those animals.

h. When an impounded domestic or exotic animal bears a license tag from any jurisdiction or other identification tag or can otherwise be identified as to its ownership, Society shall, notify the owner in the manner provided by law and, include in such notice information regarding the procedure whereby the owner can recover the animal; provided, however, that any animal suspected of rabies or which has bitten or otherwise exposed any person, shall not be released to its owner prior to the end of the quarantine period without express approval of City and MCHO.

i. For purpose of this Agreement, "working day" shall be understood to mean any weekday, from Monday through Friday, inclusive, except holidays observed by City.

j. Before releasing an impounded animal to its owner, Society shall (1) satisfy itself as to the owner's identity, (2) collect the redemption and maintenance fees prescribed by City's Fee Schedule and any other fees set by the Society, (3) provide owner with a receipt for fee payment and (4) obtain a receipt for the animal involved.

k. Society shall assist City to the extent provided herein in the enforcement of the licensing and anti-rabies vaccination provisions of the City's code. Except when a veterinarian is not present, Society shall not release any impounded dog to its owner unless it is licensed and vaccinated as required by law and Society shall not release any impounded cat to its owner unless it is vaccinated as required by City's code. It is understood that anti-rabies vaccinations must be given by or under the direct supervision of a licensed veterinarian. When a veterinarian is not available for direct supervision, the owner redeeming a dog or cat will still be required to pay for an initial license and anti-rabies vaccination. The license tag will not be issued and information will be forwarded to City's Animal Control for follow-up to assure compliance. This will also apply to animals released that are under the age to be vaccinated. The Society will not be responsible for enforcement on failure to vaccinate or license once the animal leaves the property. The Society will not issue license renewals or assess late fees.

l. Any animal may be redeemed by the owner or owners thereof or adopted in accordance with applicable law, ordinances, and Society policies. Domestic animals not redeemed by their owner shall become the property of Society at the end of any legally mandated holding period and may be disposed of at the Society's discretion. No animal taken into custody within City's jurisdiction and delivered to Society shall be sold, loaned or given to any person, firm, group, society, hospital, corporation, institution, or university, for research purposes.

m. Subject to the provisions of Subparagraph (h.) above, Society may dispose of currently licensed dogs and identified cats and otherwise identified animals which are not redeemed by their owners only after legally mandated notice has been given. The holding period for such animals shall be that period mandated by law. Animals, which are not reclaimed and cannot be identified as to ownership, may be disposed of by whichever of the following methods Society may elect:

1. Adoption at such price as Society may determine, subject to licensing requirements and subject also to laws pertaining to the sale and transfer of animals.
2. Euthanasia at a time and in a manner that is in accordance with applicable laws pertaining to impounding, housing, and disposition of animals.

n. City shall be responsible for emergency treatment services of unidentified ownership animals in accordance with Section 597f of the California Penal Code for the statutorily mandated holding period. City personnel shall only transport injured or sick domestic or exotic animals to the shelter after they have been seen by a veterinarian. City personnel shall transport injured or sick stray animals from the City's jurisdiction that are brought to the shelter by the public to a veterinarian as soon as possible. In extreme emergencies, Society may transport domestic or exotic animals to a veterinarian designated by City or its designee. City shall provide Society with a list of the approved veterinarians. If an animal becomes sick or injured at the shelter during the legally mandated holding period, Society shall arrange for the treatment of the animal by Society's veterinarian staff or by one of City's approved veterinary providers at City's expense. After the mandated holding period, Society shall be responsible for the cost of

any veterinary treatment it chooses to provide to the animal. If the owner of an injured or sick stray animal redeems said animal, the owner shall be responsible for reimbursing City and Society for their costs incurred although Society shall not be required to collect City's reimbursement from the owner. Society shall notify City's Animal Control if the animal is redeemed.

o. To facilitate redemption and adoption of impounded animals, Society shall provide a section of the shelter facility for viewing (observing) animals by prospective adopters and a section of the shelter office for redemption and adoption administration. The shelter office and viewing area hours of operation shall coincide with the hours the kennels are open to the public.

p. Society shall collect and remit to City not later than the fifteenth (15th) working day of each month following the end of a quarter, all impound fees, license fees, quarantine fees and maintenance (board) fees collected during the prior month pursuant to this Agreement. Society shall be entitled to retain a one dollar (\$1.00) processing fee for each license sold for City.

q. Society shall keep complete and accurate records on the receipt, source, holding time and disposition of all dogs, cats, and other domestic and exotic animals delivered into its custody at the Animal Shelter. Said record shall be delivered to the City each month by the twentieth (20) working day of the month for the prior month's activity. All relevant records and accounts shall be made available at the animal shelter on Society's premises for examination at all reasonable times by authorized representative of the City with 24 hours notice.

r. Society and City shall cooperate in developing an electronic licensing system utilizing glass encapsulated transponders commonly known as microchips if City chooses to initiate such a program.

s. Society shall use reasonable efforts to offer responsible pet ownership programs to schools within City's jurisdiction. Such programs will include material on the importance of licensing pets, keeping pet dogs on leashes when walking them, the health and societal benefits of sterilizing pets, and the importance of developing a relationship with a veterinarian to assure a healthy pet that is less likely to run at large because of counseling by the veterinarian. City shall assist Society in gaining access to the schools within City's jurisdiction to enable Society to present these programs.

t. Society shall use its best efforts to provide opportunities for City's residents to adopt, vaccinate, and microchip dogs and cats and to license dogs at locations within City and on dates and times that are mutually agreed between City and Society. Society shall retain all fees for services and adoptions other than licensing which shall be handled as stated in Paragraph 3(p) above. Society shall not be required to pay any fee or rental for locations selected within City for providing the services described above. City shall reasonably cooperate with these efforts.

u. Society and City believe that neither party has an obligation to subsidize for fee for service nuisance animal control operators. Consequently, Society shall not charge City for wild animals brought to it by nuisance animal control operators and City shall support Society's protocols requiring nuisance animal control operators to pay a fee to Society for wild animals they bring to Society.

v. Society shall provide and City shall facilitate the publication and dissemination of mutually agreed animal protection and responsible animal ownership materials in City publications and mailings. City shall reasonably cooperate with Society's efforts.

w. Society shall not be responsible for any animal control field services.

4. **PAYMENT.** Except as otherwise noted, the financial obligation of City under this Agreement shall be to pay an agreed upon daily fee to Society for each domestic and exotic animal brought from within the corporate limits of City and accepted by Society irrespective of who or what agency brings the animal to Society. The agreed upon fee for the period of July 1, 2007 through June 30, 2008 is \$20.00 per animal per day.

Society shall invoice City monthly for the number of animals sheltered for city under this Agreement in the previous month. The invoice shall be accompanied by an activity report listing individual animals by a control number, their origin, and the holding period being billed for each animal. City shall pay said invoice within 30 days of the invoice date.

The fee and terms are subject to renegotiation annually. Failure of the parties to negotiate fees and terms within sixty (60) days of the expiration of the existing annual agreement, may result in Society's election, at its sole discretion, to continue services after the end of the annual term at the then rate charged City per animal per day plus four (4%) percent.

5. **CONTRACT SUPERVISION.** City shall designate an official authorized and assigned to represent the interest of the City and to ensure that the terms and conditions of this Agreement are carried out. That official will be identified to the Executive Director of Society upon execution of this Agreement. Society's Executive Director or his/her designee shall administer this Agreement on behalf of Society. Both the Society and City will continuously monitor services and operations under contract in an effort to implement increased cost effectiveness and efficiency.

6. **INDEPENDENT SOCIETY STATUS.** Society understands and agrees that the services performed hereunder by its and its directors, officers, agents, employees or contracting persons or entities are performed in an independent capacity and not in the capacity of officers, agents or employees of the City. All personnel, supplies, equipment, furniture, quarters, and operating expenses of any kind required for on premise performance of this Agreement shall be provided by Society in performance of the contracted services. It is also understood that Society shall have control of its work and the manner in which it is performed, provided Society meets all legal requirements. While under contract with City, the Society shall be free to contract for similar shelter services to be performed for other agencies and/or jurisdictions.

7. **INDEMNIFICATION AND INSURANCE.** Each party agrees to indemnify, defend and save harmless the other party, their directors, officers, agents, and employees, from and against any and all claims and losses whatsoever accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm, or corporation for damage, injury or death arising out of or

connected with the indemnifying party's performance of this Agreement. To this end, Society shall maintain in force at all times during the performance of this Agreement a policy of insurance covering all of its operations (including public liability and property damage coverage but not including contingent malpractice) with not less than \$1,000,000.00 single limit liability and motor vehicle insurance, covering all motor vehicles (whether or not owned) used in providing services under the Agreement with a combined single limit of not less than \$1,000,000.00. A certificate evidencing the maintenance of such insurance shall be filed with the City. City shall be given notice in writing at least thirty (30) days in advance of cancellation or any modification thereof. Insurance shall be in a company authorized by law to transact insurance business in the State of California. All policies shall provide an endorsement naming City, its officers, agents, and employees as Additional Insured, and shall further provide thirty (30) days written notice to the City in advance of cancellation or non-renewal of said policies.

Policies shall also be endorsed to provide such insurance as Primary Insurance and that no insurance of the additional insured shall be called on to contribute to a loss covered by Society's insurance.

City shall maintain in force at all times a Comprehensive Liability Insurance including automobile liability in the amount of \$1,000,000. Proof of such coverage will be a Certificate of Insurance with written notice to the Society of not less than 30 days cancellation. The Society shall be named as an additional insured for acts or failure to act, arising out of the performance of this Agreement. Any required insurance may be provided by a plan of self-insurance at the option of the City.

8. WORKERS' COMPENSATION. Society shall, throughout the period of this Agreement, maintain in full force and effect a policy of Workers' Compensation insurance, with employers' liability limits of not less than \$100,000.00, covering all of its employees and shall furnish to City evidence of said insurance.

9. INSURANCE COVERAGE CHANGE. If City requires the Society to increase its insurance coverage within a contract year, the City agrees to pay any additional premium cost resulting from that change.

10. SECTION 504 COMPLIANCE. Section 504 of the Federal Rehabilitation Act of 1973, as amended, requires that all benefits, aids and services are made available to handicapped persons on an equivalent basis with those received by non-handicapped persons. The Society shall agree to be in compliance with Section 504 requirements by: (1) signing a Letter of Assurance, or (2) by developing a plan for compliance to be submitted to the City.

11. COOPERATION. City and Society shall cooperate with each other in carrying out the terms of this Agreement and in order to be in compliance with state law and local ordinances or regulations. City and Society shall each make available to the other all knowledge and information each has that may be of benefit to the other party. City's Animal Control or Police Department personnel shall be subject to the rules, regulations and requirements of Society while at the Shelter. City and Society agree that results of their joint proactive programs will not be immediately evident and that each will make a good faith effort to eliminate the euthanasia of adoptable animals from within City's jurisdiction.

12. **ENABLING ACTS.** City shall enact all necessary and reasonable Codes, resolutions and/or regulations to the extent permitted by applicable law, to enable Society to carry out all of its performances and functions under the terms and conditions of this Agreement and incidental thereto.

13. **NOTICE.** In addition to all other notices provided for herein, City shall give Society notice of any Code, resolution, or regulation changes contemplated by it relating to any matters affecting Society's performance or the well-being or humane treatment of animals in the community and/or functions under the terms and conditions of the Agreement. All notices herein provided to be given, or which may be given, by either party to the other, shall be in writing and be given by personal service or by United States mail postage prepaid, certified mail return receipt requested, and addressed.

14. **NONDISCRIMINATION CLAUSE.** During the performance of this Agreement, Society and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. Society and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Society and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part of as if set forth in full. Society shall also abide by the Federal Civil Right Act of 1964 (42 U.S.C. Section 1981 et seq.) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. Society and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Society shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

15. **SOLICITATION BY SOCIETY.** Throughout the term of this Agreement, Society shall be free to solicit and accept donations from any person or organization to defray the cost of any of Society's programs, including sheltering services for government organizations and general education.

16. **ASSIGNMENT AND SUBCONTRACTING.** This Agreement shall not be assigned or subcontracted by Society, either in whole or in part, without the prior written consent of the City, and any assignment without such consent shall automatically terminate this Agreement.

17. **TIMELINESS:** Time is of the essence in this Agreement.


18. **AGREEMENT PREPARATION:** It is agreed and understood by the parties hereto that this Agreement has been arrived at through thorough negotiation and that neither party is to be deemed that party which prepared this Agreement within the meaning of Civil Code Section 1654.

19. ATTORNEYS' FEES AND COSTS: The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover from the other party its reasonable costs and attorneys' fees expended in connection with such an action.

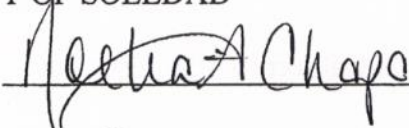
20. AMENDMENT: This Agreement may only be modified or amended by the written agreement of the parties.

IN WITNESS WHEREOF, the parties hereto, by and through their respective duly authorized representatives, have executed this Agreement on the date(s) so indicated.

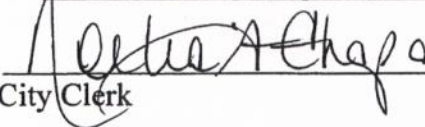
SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, California
nonprofit public benefits corporation

By: 
Gary W. Tiscornia
Executive Director

Date: 11/21/07

CITY OF SOLEDAD
By: 
Its: City Manager

Date: 11/6/07

Attest: Noelia F. Chapa
By: 
City Clerk