

RESOLUTION NO. 4381

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
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 existing agreement with the SPCA for animal shelter services; and

WHEREAS, the current FY2008-09 agreement with the SPCA is due to expire June 30, 2009; and

WHEREAS, the SPCA has indicated its willingness to continue providing the City with the desired services for FY2009-10; and

WHEREAS, the proposed costs for providing the City with the desired animal shelter services for FY2009-10 have increased from \$20 per animal per day to \$24.50 per animal per day; and

WHEREAS, the City Council authorizes the City Manager to enter into the FY2009-10 contract proposed by the Monterey County SPCA.

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 17th day of June 2009, by the following vote:

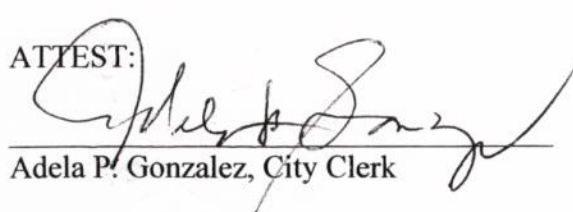
AYES, and in favor thereof, Councilmembers: Richard J. Perez, Juan Saavedra, Patricia Stephens, Mayor Pro Tem Martha Camacho, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmember: None

ATTEST:


Adela P. Gonzalez, City Clerk


RICHARD V. ORTIZ, Mayor

within the corporate limits of City by the City's residents or others.

c. Animal Control Business Hours for receiving animals from Animal Control or Police Department personnel shall be 8:00 a.m. until 4:30 p.m. Monday through Friday, and 8:00 a.m. until 4:30 p.m. 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. City will incur additional charges for assistance provided by SPCA staff outside of the above Animal Control Business hours.

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

Exhibit "A"

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 for 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

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, are relinquished by their owner, or 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 Sections 597f and 597.1 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 the shelter by the public to a veterinarian as soon as possible. In what in its sole discretion Society considers to be 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. If City does not designate approved veterinarians or if those veterinarians are unavailable, Society will transport the animal to a veterinarian of its choosing on behalf of City 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 those fees enumerated in City Code and collected by Society on behalf of City pursuant to this Agreement during the prior month. The nomenclature of these fees may vary from jurisdiction to jurisdiction but in general they include impound fees, license fees, quarantine fees and maintenance or board fees. . Society shall be entitled to retain a five dollar (\$5.00) processing fee for each license sold for City and any other fees not mandated by City Code that it may collect.

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 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.

s. 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.

t. Society and City believe that neither party has an obligation to subsidize fee based 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.

u. 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.

v. 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, 2009 through June 30, 2010 is \$24.50 per animal per day. A surcharge of \$10.00 per animal will be assessed if SPCA staff members assist City's employee or representative in receiving impounded animals at the SPCA shelter outside of the Animal Control Business Hours set forth in Section 3 (c) above.

On a limited basis and for a fee Society will accept from City's Animal Control, Police, or Public Works Departments, animal carcasses for disposal. The agreed upon fee for the period of July 1, 2009 through June 30, 2010 is \$23.00 for mammal and wildfowl carcasses weighing from five pounds to two hundred pounds and \$6.00 for mammal or wildfowl carcasses weighing less than five pounds. Society will not accept livestock carcasses or carcasses weighing in excess of two hundred pounds.

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.

Society employs Level 2 Humane Officers who are empowered under California Corporations Code Section 14502 to investigate and prepare for prosecution cases involving animal neglect and cruelty within Monterey County and its other incorporated areas. Investigations initiated and independently pursued to completion by Society will be at the sole expense of Society. City agrees to cooperate fully with SPCA Humane Officers during the performance of their duties in City. If requested by City, Society may, at its sole discretion, take financial responsibility for the continued pursuit an investigation previously initiated by City. If requested by City, Society's Humane Officers will provide technical assistance and mutual aid to City at no charge, up to, but not including, sheltering of animals. Society will assist City in investigations City undertakes that relate to cruelty to animals and will shelter animals seized by or relinquished to City during the course of an investigation under the terms and conditions set forth in Section 3 of this agreement. Where City and Society have each incurred costs in the successful prosecution of a case, each will request and make a good faith effort to secure restitution for both City and Society and will ask that any order of restitution require that funds be allocated proportionally to City and Society based on actual costs incurred by each. If restitution is not ordered or if the prosecution is not successful, neither City nor Society will have a claim against the other for costs incurred in the investigation and prosecution of the case.

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 prior to 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, a California nonprofit public benefits corporation

By: _____
Gary W. Tiscornia
Executive Director

Date: _____

CITY OF Soledad

Date: _____

By: _____

Its: _____

Attest: _____

By: _____
City Clerk