

**RESOLUTION NO. 5149**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD  
APPROVING THE CANINE TRAINING AGREEMENT WITH ZUSTAN K-9  
SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID  
AGREEMENT**

**WHEREAS**, at the regularly scheduled City Council Meeting of November 4, 2015, the City Council of the City Soledad unanimously approved the Soledad Police Department's Canine Program; and

**WHEREAS**, the Canine Program, which began in April, 2013, has been supported through an informal agreement between the Police Department and Zustan K-9 Services who has provided all POST certified training for the canine officers and their dogs; and

**WHEREAS**, for the dogs and the canine officers to maintain their Peace Officer Standards and Training (POST) certification, they must continue to train 160 hours per month; and

**WHEREAS**, this monthly training occurs at a variety of locations in Monterey County where the officers and their canines practice building searches, suspect apprehension and narcotics detection; and

**WHEREAS**, the City is responsible for paying for all training costs associated with the canines and their handlers; and

**WHEREAS**, Zustan K-9 Services has offered to continue to provide a discounted rate of \$250.00 (as opposed to \$500.00) per month for each dog and its handler, and is the only organization in Monterey County that provides police canine training.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Soledad hereby approves the canine training agreement with Zustan K-9 Services and authorizes the City Manager to execute said agreement.

**PASSED AND ADOPTED** by the City Council of the City of Soledad at a regularly scheduled meeting held on the 6<sup>th</sup> day of January, 2016, by the following vote:

AYES, and in favor thereof, Councilmembers: Christopher K. Bourke, Richard J. Perez, Patricia D. Stephens, Mayor Pro Tem Alejandro Chavez and Mayor Fred J. Ledesma

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

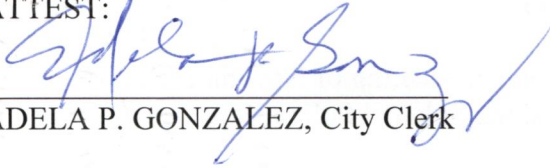
ABSENT, Councilmembers: None



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FRED LEDESMA, Mayor

ATTEST:



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ADELA P. GONZALEZ, City Clerk

**SERVICES AGREEMENT BETWEEN  
THE CITY OF SOLEDAD AND  
ZUSTAN K-9 SERVICES**

THIS AGREEMENT for contractual services is made by and between the City of Soledad ("City") and Zustan K-9 Services ("Contractor") (together referred to as the "Parties") as of January 6, 2016 (the "Effective Date").

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2016 (the "Expiration Date"), unless the term of the Agreement is otherwise terminated or extended. The City Manager may approve, in writing, two one (1) year extensions of this Agreement beyond the Expiration Date, conditioned on a determination that Contractor is not in default under any of the terms of the Agreement. Said extension shall be subject to the same terms and conditions set forth in this Agreement.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Contractor is engaged. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Contractor's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Contractor in accordance with the fees set forth in Exhibit A. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement.

The Parties acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's established costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the agreed monthly payment for services performed.

- 2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 2.3 Total Payment. City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- 2.4 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.5 Payment upon Termination. In the event that the City or Contractor terminates this Agreement, the City shall compensate Contractor for all outstanding costs for work satisfactorily completed as of the date of written notice of termination.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure worker's compensation and commercial general liability insurance, in the amounts and types agreed to by the Parties, for coverage against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance and that such insurance is in effect prior to beginning work for the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. All insurance shall be at a minimum of \$1,000,000.00 per occurrence, shall be made on a occurrence basis, and not "claims-made," shall name the City, its officers, officials, employees, and volunteers as additional insureds, and for any claims related to this Agreement or the work hereunder, shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. In the event Contractor should fail to procure the necessary insurance in accordance with this provision, City may terminate the Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims,

expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Contractor, the Contractor waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Contractor Not an Agent. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law. The laws of the State of California shall govern this Agreement.

- 7.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.
- 7.4 Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon 30 (thirty) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination.

- 8.2 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.
- 8.3 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

Section 9 MISCELLANEOUS PROVISIONS.

- 91 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing

party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 9.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Monterey or in the United States District Court for the Northern District of California.
- 9.3 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 9.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 9.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 9.6 Conflict of Interest. Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.* Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*
- 9.7 Contract Administration. This Agreement shall be administered by Adela P. Gonzalez, City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or her or his designee.
- 9.8 Notices. Any written notice to Contractor shall be sent to:  
Zustan K-9 Services LLC  
P.O. Box 636  
Gilroy, CA 95021

Any written notice to City shall be sent to:  
City of Soledad  
Adela P. Gonzalez, City Manager  
248 Main Street  
Soledad, CA 93960

9.9 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

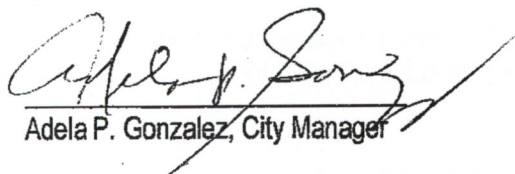
Exhibit A      Scope of Services

9.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The parties have executed this Agreement as of the Effective Date.

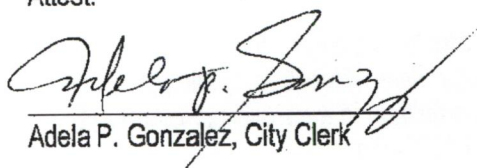
CITY OF SOLEDAD

CONTRACTOR-Zustan K-9 Services

  
Adela P. Gonzalez, City Manager

  
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Attest:

  
Adela P. Gonzalez, City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael Rodriguez, City Attorney

## EXHIBIT A

### SCOPE OF SERVICES

Zustan K-9 Services (hereafter "Contractor") is a law enforcement training provider that trains both canines and handlers to achieve and exceed industry standards. During the term of this Agreement, Contractor shall provide the following services for the identified costs:

1. For K-9 teams (1 handler, 1 canine) that are already certified to California Peace Officers Standards and Training ("P.O.S.T.") requirements, Contractor will provide ongoing monthly maintenance and development training in accordance with P.O.S.T. recommendations for a minimum of 16 hours per month at a cost of \$250.00 per month per K-9 team. Weekly training sessions will include real life training scenarios that law enforcement agencies face everyday, including training at alternative training sites, exposure to day/night training, use of vehicles, and multiple surface training. Training will also include instruction in obedience, handler protection, building searches, outside area searches, suspect apprehension, call-offs, canine control, narcotic detection, suspect tracking, muzzle work, P.O.S.T. K-9 team annual certification, and written documentation on team performance after each training session.

2. For those K-9 teams that have not completed the P.O.S.T. mandated 160 hour basic Canine Handler Course- Contractor will provide the initial basic K-9 Handler course and certification for a one-time fee of \$3,000. At the completion of the course, the involved K-9 team(s) will thereafter be subject to the monthly maintenance and development training referenced in Section 1.

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STATE OF TEXAS

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