

AGREEMENT FOR PROFESSIONAL SERVICES

between

COUNTY OF SANTA BARBARA

and

SANTA MARIA VALLEY HUMANE SOCIETY

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter COUNTY) and the Santa Maria Valley Humane Society, a public charity in Santa Barbara County, (hereafter HUMANE SOCIETY) wherein COUNTY agrees to provide and HUMANE SOCIETY agrees to pay for the services specified herein.

WHEREAS, HUMANE SOCIETY has been awarded a targeted grant from PetSmart Charities ("grant") to provide affordable spay and neuter services; and

WHEREAS, HUMANE SOCIETY and COUNTY agree to cooperate to provide affordable spay and neuter services; and

WHEREAS, COUNTY has agreed to provide approximately 650 of the planned 1,700 dog spay or neuter surgeries proposed in the grant over a two year period between July 1, 2013 and June 30, 2015; and

WHEREAS, HUMANE SOCIETY has agreed to provide approximately 1,050 of the planned 1,700 dog spay or neuter surgeries proposed in the grant over a two year period between July 1, 2013 and June 30, 2015; and

WHEREAS, HUMANE SOCIETY is the fiscal agent for the grant;

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

1. DESIGNATED REPRESENTATIVE.

Jan E. Glick, Director of Animal Services, at phone number 805-934-6953 is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Jill Tucker, Executive Director, at phone number 805-349-3435 ext. 106, is the authorized representative for HUMANE SOCIETY. Changes in designated representatives shall be made only after advance written notice to the other party in accordance with Section 2, NOTICES, below.

2. NOTICES.

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, delivered as follows:

To COUNTY: Jan E. Glick, MS
Director of Animal Services
5473 Overpass Road
Santa Barbara, CA 93111

To HUMANE SOCIETY: Jill Tucker
Executive Director
Santa Maria Valley Humane Society
1687 W. Stowell Road
Santa Maria, CA 93458

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. SCOPE OF SERVICES.

COUNTY shall provide services to residents living within zip code 93458 in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM.

The term of this Agreement shall be from July 1, 2013 to June 30, 2015.

5. COMPENSATION OF COUNTY.

For services rendered from the COUNTY operated shelter in Santa Maria between July 1, 2013 and June 30, 2015, HUMANE SOCIETY shall pay COUNTY pursuant to EXHIBIT B attached hereto and incorporated herein by reference.

The parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

6. CONFLICT OF INTEREST.

HUMANE SOCIETY covenants that HUMANE SOCIETY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance under this Agreement. HUMANE SOCIETY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by HUMANE SOCIETY.

COUNTY covenants that COUNTY presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its performance under this Agreement. COUNTY further covenants that in the performance of this Agreement, no person having any such interest shall be employed by COUNTY.

7. OWNERSHIP OF DOCUMENTS.

All reports and documents prepared by COUNTY under this Agreement are the joint property of the HUMANE SOCIETY and the COUNTY.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of COUNTY. COUNTY shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

8. INDEMNIFICATION AND INSURANCE.

8.1. Indemnification.

HUMANE SOCIETY shall indemnify, defend and hold COUNTY and its agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of

HUMANE SOCIETY and its officers, agents and employees. HUMANE SOCIETY shall indemnify, defend and hold COUNTY and its agents, officers and employees, harmless from and against any claims, damages, losses, or causes of action and expenses related to a surgery performed by HUMANE SOCIETY pursuant to the grant.

COUNTY shall indemnify, defend and hold HUMANE SOCIETY and its agents, officers and employees, harmless from and against all claims, damages, losses, causes of action and expenses, including attorneys' fees, for any personal injury, bodily injury, loss of life or damage to property, violation of any federal, state or municipal law, ordinance or constitutional provision, or other cause which arise out of, relate to, or result from the activities or omissions, negligent or otherwise, under this Agreement of COUNTY and its officers, agents and employees.

8.2. Insurance.

HUMANE SOCIETY agrees to procure and maintain insurance in accordance with the provisions of EXHIBIT C attached hereto and incorporated herein by reference.

9. NONEXCLUSIVE AGREEMENT.

HUMANE SOCIETY understands that this is not an exclusive Agreement and that COUNTY shall have the right to negotiate with and enter into contracts with others to provide the same or similar services as those provided to HUMANE SOCIETY as the COUNTY desires.

10. ASSIGNMENT.

COUNTY shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of HUMANE SOCIETY and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

11. TERMINATION.

11.1. For Cause. In the event of a material breach of this Agreement, either party may initiate termination of the Agreement. The aggrieved party shall serve the other party with a thirty (30) day notice to cure the breach. The notice must specify in detail the nature of the alleged material breach, including the supporting factual basis and any relevant documentation. (i) A material breach by COUNTY may include, but not be limited to, COUNTY's failure to meet the requirements described in Exhibit A of this Agreement; (ii) A material breach by HUMANE SOCIETY may include, but not be limited to, failing to make timely payments as described in Exhibit B and required by this Agreement.

The party receiving the notice shall have ten (10) days from the date of receipt to respond to the alleged breach by either requesting in writing a meeting with the noticing party, curing the breach, or if the breach is of such a nature that it cannot be reasonably cured within thirty (30) days, commence curing the breach within said period and notifying the other party of the actions taken. If a meeting is requested by the party receiving the notice, it shall be scheduled within ten (10) days of the date notice is received. If corrective action is not taken by the party receiving notice, or the parties do not reach an agreement during the notice period, the parties shall deliver to each other all data, estimates, graphs, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by the other party in performing this Agreement, whether completed or in process, and this Agreement shall terminate upon completion of the thirty (30) days notice period, at the option of the noticing party, notwithstanding any other provision of this Agreement.

11.2. For Convenience. Either party may, by written notice to the other, terminate this Agreement in whole or in part at any time upon thirty (30) days written notice. Following notice of such termination, COUNTY shall promptly cease work and notify HUMANE SOCIETY as to the status of its performance.

11.3. If HUMANE SOCIETY does not receive the second installment of the grant COUNTY shall have no further obligations under this Agreement. The Agreement shall be in effect until all payments have been made to COUNTY for services performed pursuant to this Agreement.

11.4. Notwithstanding any other payment provision of this Agreement, HUMANE SOCIETY shall pay COUNTY for service performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.

12. SECTION HEADINGS.

The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

13. SEVERABILITY.

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

14. REMEDIES NOT EXCLUSIVE.

No remedy herein conferred upon or reserved to COUNTY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

15. TIME IS OF THE ESSENCE.

Time is of the essence in this Agreement and each covenant and term is a condition herein.

16. NO WAIVER OF DEFAULT.

No delay or omission of COUNTY to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to COUNTY shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of COUNTY.

17. ENTIRE AGREEMENT AND AMENDMENT.

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

18. SUCCESSORS AND ASSIGNS.

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

19. COMPLIANCE WITH LAW.

HUMANE SOCIETY shall, at its sole cost and expense, comply with all county, state and federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of HUMANE SOCIETY in any action or proceeding against HUMANE SOCIETY, whether COUNTY be a party thereto or not, that HUMANE SOCIETY has violated any such ordinance or statute, shall be conclusive of that fact as between HUMANE SOCIETY and COUNTY.

20. CALIFORNIA LAW.

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

21. EXECUTION OF COUNTERPARTS.

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

22. AUTHORITY.

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, HUMANE SOCIETY hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which HUMANE SOCIETY is obligated, which breach would have a material effect hereon.

23. PRECEDENCE.

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

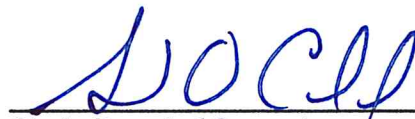
Agreement for spay and neuter services between the **County of Santa Barbara** and **Santa Maria Valley Humane Society**.

IN WITNESS WHEREOF, the parties have executed and ratified this Agreement to be effective on July 1, 2013.

COUNTY OF SANTA BARBARA

ATTEST:

TERRI MAUS-NISICH, INTERIM COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD


Chair, Board of Supervisors

Date: 12-3-13

By: 
Deputy Clerk


APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By: 
Deputy County Counsel

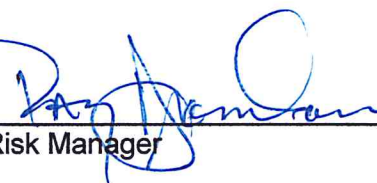
APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
Deputy

APPROVED
TAKASHI WADA, MD, MPH
DIRECTOR / HEALTH OFFICER
PUBLIC HEALTH DEPARTMENT

By: 
Director

APPROVED AS TO FORM:
RAY AROMATORIO
RISK MANAGER

By: 
Risk Manager

APPROVED
JAN E. GLICK, MS
DIRECTOR OF ANIMAL SERVICES
PUBLIC HEALTH DEPARTMENT

By: 
Director

Agreement for Spay and Neuter Services between the **County of Santa Barbara** and **Santa Maria Valley Humane Society**.

IN WITNESS WHEREOF, the parties have executed and ratified this Agreement to be effective on July 1, 2013.

SANTA MARIA VALLEY HUMANE SOCIETY

By: _____
Claire Sheehy, President

Date: Nov. 20, 2013

ATTEST

By: _____
Jill Tucker, Executive Director

EXHIBIT A

STATEMENT OF WORK

- A) During the term of this Agreement, the parties agree that the COUNTY's division of Animal Services intends to perform approximately 650 of the planned 1,700 dog spay or neuter surgeries proposed in the grant for dogs living within the 93458 zip code area over a two year period between July 1, 2013 and June 30, 2015.
- B) The COUNTY shall perform the surgeries at its clinic at the Santa Maria Animal Center, 548 W. Foster Road, Santa Maria, CA 93455.
- C) The HUMANE SOCIETY shall compensate COUNTY for each surgery performed pursuant to EXHIBIT B.

EXHIBIT B

PAYMENT AGREEMENT

HUMANE SOCIETY shall compensate COUNTY for each surgery performed pursuant to this Agreement as follows:

- A) For dogs under 50 lbs. the total amount received by COUNTY from HUMANE SOCIETY and/or other sources shall be for an amount equal to the amount in the fee schedule approved by the Board of Supervisors and in effect at the time the surgery takes place. The current amount as of the effective date of this Agreement is \$65 for male dogs and \$70 for non-pregnant female dogs. Payment by HUMANE SOCIETY shall not exceed \$70.
- B) For dogs over 50 lbs. compensation by HUMANE SOCIETY shall be \$70.

COUNTY shall submit monthly invoices to HUMANE SOCIETY at the address in Section 2 of the Agreement. Invoices shall indicate the number of surgeries performed, the sex and weight of the animal, and the amount to be paid to COUNTY.

Payment to COUNTY from HUMANE SOCIETY shall be made within 30 days of invoice presentation.

EXHIBIT C

STANDARD INSURANCE PROVISIONS for contracts REQUIRING professional liability insurance

1. INSURANCE

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverage is to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

- 1.1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
- 1.2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CONTRACTOR in the indemnity and hold harmless provisions of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CONTRACTOR pursuant to CONTRACTOR's activities hereunder. CONTRACTOR shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

1.3. Professional Liability Insurance. Professional liability insurance shall include coverage for the activities of CONTRACTOR's professional staff with a combined single limit of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Said policy or policies shall provide that COUNTY shall be given thirty (30) days written notice prior to cancellation, expiration of the policy, or reduction in coverage. If the policy providing professional liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three (3) years (ten years [10] for Construction Defect Claims) following completion of the performance or attempted performance of the provisions of this Agreement.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated COUNTY representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR's services of operation pursuant to the Agreement, nor shall it be deemed a waiver of COUNTY's rights to insurance coverage hereunder.

In the event the CONTRACTOR is not able to comply with the COUNTY's insurance requirements, COUNTY may, at their sole discretion and at the CONTRACTOR's expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any **amendment** of this Agreement **that results in an increase in the nature of COUNTY's risk** and such change of provisions will be in effect for the term of the **amended** Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by **written** amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.