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3/6/14

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT BETWEEN THE CITY OF FRESNO AND THE CENTRAL CALIFORNIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

[March 1, 2014 through June 30, 2015: Renewable annually through June 30, 2018]

This AGREEMENT, ("Agreement"), effective as of March 1, 2014, is entered by and between the CITY OF FRESNO, a municipal corporation, ("City") and the CENTRAL CALIFORNIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a duly organized and qualified California nonprofit public benefit corporation ("Society").

RECITALS

WHEREAS, under this Agreement Society shall provide the City with all animal control, pound master, veterinary and animal sheltering services, facilities and related activities authorized and required by applicable law including without limitation California Food and Agriculture Code sections 31105, 31106, California Penal Code section 597f, and Fresno Municipal Code sections 10-301 to 10-329, (collectively the "Services"); and

WHEREAS, from and after the effective date hereof and pursuant to state law[1] and City of Fresno Resolution No. 2000-197 dated June 27, 2000 including any implementation plan(s) adopted thereunder, the City and its contractor(s) must augment the Services, as more specifically set forth hereunder. (The Services as augmented are collectively as the "Augmented Services"); and

WHEREAS, City desires to obtain the Augmented Services from the Society, and Society desires to provide the Augmented Services to City, including but not limited to those that are more specifically described in **Exhibit A,** attached hereto and incorporated herein; and

WHEREAS, Society is variously engaged in the business of providing the Augmented Services, and possesses unique and superior knowledge, skill, resources, facilities and expertise in the rendition of the Augmented Services, and is fully competent, authorized, and able to perform the Augmented Services, holding any and all implicated licenses, permits, permissions and/or approvals; and

WHEREAS, Society provides such Augmented Services on a contract basis, as an independent contractor possessing and exercising the complete right to control the means of accomplishing said Augmented Services; and

WHEREAS, City intends to assume management of animal control and pound services for the City of Fresno by either providing services itself or through another agency. The date of such transition will coincide with the expiration of this Agreement, or will be made known to Society according to the terms set forth in this Agreement; and

[1] SB 1785 chaptered September 23, 1998; AB 1482 chaptered July 12, 1999.

WHEREAS, this Agreement, and the Augmented Services to be provided thereunder, are contingent on the City Council's appropriation of money for each Fiscal Period hereunder sufficient for the continued performance by City of all City's obligations hereunder, such that should sufficient funds not be appropriated, the Augmented Services provided may be modified, or this Agreement terminated, at any time by the City as provided in Section V hereunder; and

WHEREAS, the CITY Council has appropriated monies sufficient to fund this Agreement for Fiscal Year 2013-2014 hereunder.

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

I. TERM

1. This Agreement shall be effective from the date first set forth above and will continue so long as any amount remains unpaid hereunder, for an Initial Term beginning on the date first set forth above and expiring at midnight June 30, 2015, ("Initial Term") subject to such termination rights as are provided in Section V below.

   Beginning at the expiration of the Initial Term, the term of this Agreement may be extended upon the successive appropriation by City Council ("Renewal Term") of amounts sufficient to make payments due hereunder during the successive Renewal Term, for up to three (3) Renewal Terms. Each Renewal Term and the scheduled payments hereunder shall correspond with City's Fiscal Period. The amount of fees due, other than prepaid fees, shall be fixed by the parties' annual written agreement added as a renewal addendum hereto, unless either party shall give written notice of non-renewal at least ninety (90) days prior to expiration of the then current Initial or Renewal term, subject to such termination rights as are provided in Section V below. In no event shall this Agreement extend beyond June 30, 2018.

2. The City's Renewal Term and Fiscal Period shall run from July 1 through June 30.

II. AUGMENTED SERVICES

1. Without limiting any obligations or liabilities owed by the Society hereunder, during the entire term hereof the Society shall provide the City with those Augmented Services including but not limited to those that set forth in **Exhibit A**. Without limiting the foregoing, the **Exhibit A** Augmented Services may be

modified hereunder upon the parties' mutual written agreement, added as an addendum to this Agreement. All requests for adjustments shall be submitted to the other party in writing. Society's daily schedule and hours worked under this Agreement on a given day shall generally be subject to Society's discretion, provided that Society shall devote sufficient time as is reasonably necessary to fulfill the spirit and purpose of this Agreement.

2. The Society shall possess and maintain all necessary equipment, supplies and facilities, and employ and supervise all necessary personnel, to successfully render all services agreed upon during the term of this Agreement and any renewals thereof. The City assumes no obligation for the provision of equipment, supplies, facilities, or personnel to the Society for the execution of the Agreement. All costs of Society's performance hereunder including said equipment, supplies, facilities, and personnel are to be included in the monetary amount requested by the Society and agreed to in this Agreement.

3. The Society has represented to the City that in order for the Society to provide the Augmented Services, the Society must incur certain start-up costs. In reliance thereon, solely in order to assist the Society with its cash flow needs, and subject to specified reimbursements obligations set out below, the City has agreed to certain prepayment of fees coming due under this Agreement as more specifically provided for hereunder, provided that substantiation and support of such reasonable start-up costs incurred in pursuit thereof, shall be an express condition precedent to any such prepayment obligation in City, and further provided that such prepayment of fees shall be subject to all other terms and conditions contained in this Agreement including those dealing, modification, adjustment, reimbursement, non-renewal and early termination, and finally provided that in no event shall such fee prepayment ever exceed the Society's actual invoiced and paid start-up costs.

4. Society acknowledges and agrees that it shall perform all of its obligations under this Agreement in full compliance with all applicable federal, state and local laws and regulations, which are not in effect or hereinafter enacted from time to time. The Society, and not the City, is responsible for ascertaining what other laws and regulations, not specifically stated herein, apply to the performance of its obligations herein, and that City is under no duty whatsoever to advise Society of same. Society acknowledges and agrees that, at all times hereunder, it shall hold any and all necessary licenses, permits, permissions and approvals to provide the Augmented Services.

5. Notwithstanding the foregoing, the City agrees to notify the Society of proposed changes in City Code(s) affecting Society's performance under this Agreement no less than thirty (30) days prior to the scheduled date for public hearing on the adoption of such. If the Society claims that such Code change(s) would cause a verifiable and materially adverse financial impact upon the Society that was not anticipated under this Agreement as then operative, the Society may request an

adjustment in the current fee amount due hereunder notwithstanding section III subsection 2(c). Upon the City reviewing such request including all requested substantiating and supporting materials, the City shall respond thereto within sixty (60) days of enactment of such Code change(s). Any agreed upon adjustment shall be added as an amendment thereto.

III. FEES

1. In consideration of the Society's performance hereunder including the Augmented Services, and subject to the terms and conditions herein including without limitation the conditions precedent set forth in section II, subsection 3 of this Agreement, the City agrees to compensate the Society according to, and in the manner provided in, the Fee Schedule set out in **Exhibit B**, attached hereto/incorporated herein by its reference.

2. Notwithstanding Exhibit "B" the parties agree that:

   a. The City shall not reimburse the Society for any non-**Exhibit B** costs/expenses incurred by Society in pursuit hereof, including without limitation non-mandated costs associated with educating the public on matters of animal ownership, absent the City's prior express written consent

   b. The Society shall provide the City with a one hundred percent (100%) credit against **Exhibit B** fees owing, or a cash payment in the event no such fees are owing, in the amount of all funding, reimbursement, or monetary assistance received by Society from the State of California for its performance of state mandated Augmented Services.

   c. Without limiting the foregoing, the **Exhibit B** Fee Schedule may be modified not more often than once in each year hereunder upon the parties' mutual written agreement, added as an addendum to this Agreement. The burden of supporting any request for adjustment shall be upon the requesting party. All requests for adjustment shall be submitted to the other party in writing.

   d. For a period of three (3) years after final payment, Society shall provide any substantiation and support for fees, costs and expenses upon the reasonable request of the City.

   e. Books, accounts and records of Society's revenues, costs and expenses pertaining to and specifically identifying the Augmented Services shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three (3) years after final payment. Such books, accounts and records

shall be maintained in such a manner as to clearly distinguish revenues and expenses arising hereunder from other Society activities. In addition, all books, accounts, records, documents, papers, and instruments of Society pertaining to the Augmented Services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time.

IV. REPORTS/FUNDING REQUESTS

1. The Society agrees to provide the City with written reports during the term of this Agreement, as follows:

   a. Service Report: The Society shall provide the City with monthly and annual service reports covering activities and services performed in the execution of this Agreement in the format set forth in **Exhibit C** attached hereto and incorporated herein by reference. Monthly reports are due by the 15th of each month commencing January 15, 2014, and the annual reports are due by October 1st of each year commencing with October 1, 2014. Such reports shall be approved by the Board of Directors of the Society prior to submission to the City.

   b. Fiscal Report: Society shall provide the City with monthly and annual fiscal reports and audited financial statements covering all income and expenses incurred in the execution of this Agreement in the format set forth in **Exhibit D** attached hereto and incorporated herein by reference. Monthly reports are due by the 15th of each month commencing January 15, 2014; and the annual audit is due by October 1st of each year commencing with October 1, 2014. Such reports shall be approved by the Board of Directors of the Society prior to submission to the City. Society agrees to provide copies of state and federal returns and filings upon the reasonable request of City.

   c. Complaint Report: Society shall provide, on a quarterly basis, the City with copies of complaints regarding Augmented Services provided, including complainant identification and steps taken to resolve the complaint.

   d. Requests for Funding: A written request for funding for each renewal term hereunder, to be provided by April 1st of the preceding contract year.

   e. Dog Bites: Within twenty-four (24) hours of learning of any animal bites, the Society shall inform the City's authorized representative(s) thereof.

V. TERMINATION OF AGREEMENT

1. The term of this Agreement shall expire upon the first of the following to occur:

   a. The expiration of the Initial Term or any Renewal Term during which an Event of Non-Appropriation occurs;

   b. The day after the last scheduled payment hereunder is paid in full;

   c. Society's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Society;

   d. Written notice allowing any breach or default hereunder by Society where such breach or default is not cured within thirty (30) days written notice thereof by City to Society;

   e. Written notice of breach or default that is not susceptible of cure;

   f. Thirty (30) days' written notice without cause by either party hereto;

   g. Society's material cessation of business or operations; or

   h. Expiration of the Initial Term and all agreed upon Renewal Terms.

   Any such termination shall not relieve a Party of obligations due and owing at the time of termination.

2. An "Event of Non-Appropriation" means the failure of the City Council to appropriate money for any Fiscal Year sufficient for the continued performance by City of all City's obligations hereunder.

3. The City agrees that its primary business official will do all things lawfully within such official's power (i) to include amounts to make payments hereunder in each annual or biennial budget (as appropriate) to be submitted to City Council and (ii) to maintain and utilize any funds appropriated in any given Fiscal Period for the purpose for which those funds were appropriated. City hereby agrees to notify Society immediately (and in no case later than 90 days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Non Appropriation. The parties herein acknowledge that appropriation for payments hereunder is a government function which City cannot contractually commit itself in advance to perform and this Agreement does not constitute such a commitment.

4. Immediately upon any termination hereof, and without waiver or limitation as to claims, damages, rights and remedies available to City under law, contract and equity, the Society immediately shall return to the City unearned (current year)

fee payments, and fee prepayments according to the reimbursement schedule attached hereto as **Exhibit E** and incorporated herein, and the City shall be possessed of a complete right of setoff as to sums, as well as all properties and materials in the possession of Society at the time of termination that are owned by the City. Such unearned and prepaid fees represent advanced payment of fees for services not performed, and shall not be construed as, nor constitute a recovery or waiver as to, any claims, damages, rights or remedies available to City upon breach or default by Society hereunder.

5. Notwithstanding the above the City at all times retains any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

VI. RELEASE OF INFORMATION AND OWNERSHIP OF WORK PRODUCT

1. Except to the extent required by law, any reports, information, or other data prepared or assembled by Society pursuant to this Agreement shall not be made available to any individual or organization by Society without the prior written approval of City.

2. All right, title and interest in and to any and all data, materials, reports, compilations, documents, instruments and/or other information in any form/media generated by Society in pursuit of this Agreement and the Augmented Services provided for herein shall be vested in the City and shall be transmitted to City by Society upon termination of the Agreement. Society shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

3. Except to any extent expressly set forth in this Agreement, the City does not grant, convey, or delegate to Society any property interest or express or implied agency, license, right or authority. Without limitation, Society shall have no authority to bind the City absent its express written consent.

VII. INDEMNIFICATION

1. Society shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, Society, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's

fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Society's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, forfeitures, costs or damages caused solely by the sole negligence or by the willful misconduct of the City.

2. This Section VII shall survive termination or expiration of this Agreement.

VIII. INSURANCE

1. Throughout the life of this Agreement, Society shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. The following policies of insurance are required:

   a. COMMERCIAL GENERAL LIABILITY insurance which shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than $2,000,000 per occurrence. Upon occupancy, the commercial general liability insurance shall include owner, landlords and tenants liability coverage and fire legal liability coverage.

   b. COMMERCIAL AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than $2,000,000, and property damage insurance of not less than Five Hundred Thousand and 00/100 Dollars ($500,000.00), per occurrence.

   c. WORKERS' COMPENSATION insurance as required under the California Labor Code.

   d. FIDELITY BOND (or City held retention account) in the principal amount of One Hundred Fifty Thousand Dollars ($150,000). Society shall provide evidence of the existence of said fidelity bond and of the commitment of the bond underwriter to notify the City in writing not less than thirty (30) days before the expiration, cancellation or other material change to said bond.

2. The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term

of this Agreement, Society shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) days prior to the expiration date of the expiring policy(ies).

3. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Society shall file with City a certified copy of the new or renewal policy and certificates for such policy.

4. The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Society's insurance shall be primary and no contribution shall be required of City. Society shall furnish City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement. Society shall furnish City with copies of the actual policies upon the request of City's Risk Manager or his/her designee at any time during the life of the Agreement or any extension. All coverage available to Society shall also be applicable to the City as additional insured.

5. If at any time during the life of the Agreement or any extension, Society fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Society shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

6. If Society should subcontract all or any portion of the work to be performed under this Agreement, Society shall require each subcontractor to provide insurance protection in favor of the City its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Society and City prior to the commencement of any work by the subcontractor.

IX. CONFLICT OF INTEREST

1. Prior to City's execution of this Agreement, Society shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said statement is attached hereto as **Exhibit F** and incorporated herein by reference. During the term of this Agreement, Society shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Society on **Exhibit F**.

2. Society shall not employ or retain the services of any person while such person either is employed by City or is a member of any City commission, board,

committee, or similar City body. This requirement may be waived by the City's Chief Administrative Officer if no actual or potential conflict is involved.

3. The Society shall not enter into any proposed transaction or series of transactions, if any person who is then one of its directors, employees, or officers, would, directly or indirectly, receive any income as the result of such a proposed transaction or series of transactions.

4. Society shall comply with all applicable laws, rules, regulations and professional canons/requirements governing avoidance of impermissible client conflicts, including without limitation the requirements of the California Political Reform Act (Government Code Section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et seq.).

5. Society represents and warrants that as of the effective date hereof, it represents no client whose interests are adverse to the City's.

6. This Section IX shall survive expiration or termination of this Agreement.

X. NONDISCRIMINATION

1. Society shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the performance of this Agreement, Society agrees as follows:

   a. Society will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

   b. Society will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Society shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical

condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Society agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

c. Society will, in all solicitations or advertisements for employees placed by or on behalf of Society, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.

d. Society will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Society's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

XI. INVALID PROVISIONS

The provisions of this Agreement are severable. In the event any term, covenant, condition or provision of this Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

XII. INDEPENDENT CONTRACTOR

Society is and throughout this Agreement shall be an independent contractor and not an employee, partner or agent of the City. However, City shall retain the right to verify that Society is performing its respective obligations in accordance with the terms hereof.

XIII. PARTNERSHIP/JOINT VENTURE

This Agreement does not evidence a partnership or joint venture between Society and City. Society shall have no authority to bind the City absent City's express written

consent. Except to the extent otherwise provided in this Agreement, Society shall bear its own costs/expenses in pursuit hereof.

XIV. NO THIRD PARTY BENEFICIARIES

The parties acknowledge and agree that the Society is providing Augmented Services hereunder only to and for the benefit of the City and that there are no intended or incidental beneficiaries of this Agreement.

XV. NOTICES

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth below or at such other address as the Parties may from time to time designate by written notice.

If to City: City of Fresno
City Manager's Office
2600 Fresno Street, Room 2097
Fresno, CA 93721-3605

If to Society: Central California Society for the Prevention of Cruelty to Animals
Attention: Linda Van Kirk
103 South Hughes Avenue
Fresno, CA 93706

Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

XVI. NON-ASSIGNMENT

This Agreement is personal to Society and there shall be no assignment by Society of its rights or obligations under this Agreement without the prior written approval of City.

XVII. NON-SOLICITATION

Society represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights/benefits hereunder.

XVIII. GOVERNING LAW/VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

XIX. ATTORNEY'S FEES

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

XX. CUMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

XXI. FURTHER ASSURANCES

1. The City and Society agree to use best efforts in pursuit of this Agreement.

2. Upon request, and at no cost to the City, a representative of the Society shall attend meetings of the City Council for the purpose of providing expert information to said Council, and/or for the purpose of providing information to said Council concerning any matter arising out of or in connection with the Society's provision of Augmented Services under this Agreement.

3. The City shall provide, and review with, the Society, copies of all studies, reports, and recommendations prepared by the City covering any aspect of this Agreement or operations of the Society. Representatives of the City and the Society shall meet at least once each quarter ("quarterly meeting") to review the Society's activities and performance in the execution of this Agreement. The Society shall recommend appropriate revisions to the City's ordinances covering animal control consistent with the Society's experience in performing said services.

   When necessary, the City's administration will participate in quarterly meetings. It is the intent of the parties that quarterly meetings shall be the exclusive means for either party to express its concerns regarding performance by City or Society under this Agreement. To the extent practicable, the parties shall make good faith efforts not to otherwise publicly disparage each other or its members in respect to performance of this Agreement.

4 This Agreement shall be administered for the City by the Chief Administrative Officer, or such person as she/he shall designate.

5. The Society shall abide by the requirements of the Immigration Control and Reform Act assuring the right to work of all newly hired employees and that all required documentation of the right to work is inspected and that the INS Form 1-9 is completed. The Society shall make the required documentation available upon request to the Director of the Department of Administrative Services of the City for the inspection.

XXII. GENDER

In this Agreement, whenever the context so requires, the singular shall include the plural, and the neuter shall include the masculine and the feminine, and the masculine shall include the feminine and neuter.

XXIII. AMENDMENT

This Agreement may be amended only by written instrument duly authorized and executed by both parties.

XXIV. FINAL AGREEMENT

This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may be modified only by written instrument duly authorized and executed by both City and Society.

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The parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Bruce Rudd
City Manager

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Sherri L. Bedertscher
Deputy 7/25/14

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian
Tracy N. Parvanian Date 7.24.14
Deputy City Attorney

CENTRAL CALIFORNIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, a nonprofit corporation

By: _____

Name George Milutinovich

Title: _____
(if corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: B Rae

Name: Barbara Rae

Title: _____
(if corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Attachments: Exhibits A - F

TNP:prn-ns [63217prn/agt] 1/27/14

EXHIBIT A - AUGMENTED SERVICES

1. The Society shall provide the City with all animal control, animal care, pound master, animal sheltering/quarantining, leash law enforcement, veterinary care and related Augmented Services required of City and enforceable by City under federal, state and local law including without limitation California Civil Code Sections 1815, 1816, 1834, 1834.4, 1845, 1846, 1847 and 2080; California Food and Agricultural Code Section 17005, 17006, 31752.5, 31753, 31754, and 32003; California Penal Code Section 597.1, and 599d ; Fresno Municipal Code Chapter 10, Article 3, Sections 10-301 through 10-329, as such may be enacted or amended from time to time.

2. Without limiting the foregoing, Augmented Services shall include the following:[2]

   a. Enforcement of the City's dog licensing ordinance by:

      (1) Issuing dog licenses and collecting fees for said licenses for any dog over the age of four (4) months vaccinated for rabies before redemption by its owner or new adopted owner if there is not proof that the dog has previously been vaccinated. An unvaccinated dog under the age of four (4) months shall be released to its owner (including a new owner) residing within the City only upon he signed agreement of such owner to have the dog vaccinated for rabies within ten (10) days after the dog is four (4) months old. In the event of a release of an unlicensed, unvaccinated dog, the dog license fee shall be collected before release of the dog, but the dog license and the dog license tag shall not be issued until display of the vaccination certificate to the Society. In the event that said licenses are not issued within thirty (30) days, said fees shall be forfeited and remitted to the City.

      (2) Society shall retain 75% of any new or renewed license fees and shall pay the City the remaining 25% of any new or renewed license fees.

      (3) Delivering forfeited and issued license fees together with duplicate receipts to the City's License and Collection Supervisor on a quarterly basis on the following dates: January 15, 2014; April15, 2014; July 15, 2014; October 15, 2014; January 15, 2015; and April 15, 2015. Also delivering to the City, on the same quarterly basis, unclaimed spaying/neutering deposits deemed part of the funds which the City provides to the Society for spaying/neutering of animals and educational purposes, in accordance with Section 30503 of the Food and Agricultural Code.

      (4) Retaining any maintenance and redemption fees collected to maintain any dog in the shelter until said licensing fees are collected.

      (5) Employing, supervising and training qualified personnel to assist in the enforcement of said ordinance.

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[2] In the event this section 2 of Exhibit "A" conflicts with section 1 of Exhibit "A", section 1 shall control.

b. Enforcement of the City's ordinance prohibiting unrestrained animals running at large by:

(1) Patrolling activities within the City limits to pick up animals running at large, during hours set forth by the Society in Section 2(d)(4).

(2) Patrolling within the City limits to pick up unlicensed dogs running at large.

(3) Patrolling within the City limits to pick up licensed dogs running at large and/or cite their owners for an infraction in violation of the City's ordinance prohibiting animals at large.

(4) Picking up licensed or unlicensed stray dogs and stray cats held by property owners or tenants, upon their request to do so and at no cost to them, and assisting veterinarians who request related services for other stray animals.

(5) Employing, supervising, and training qualified personnel to assist in the enforcement of said ordinance.

c. Enforcement of the City's ordinance requiring dogs to be vaccinated against rabies by:

(1) Requiring proof of rabies vaccination prior to releasing impounded dogs as per Section 2 a (1) of this Exhibit A.

(2) Impounding dogs picked up running at large who do not have valid tags certifying vaccination against rabies.

(3) Reporting all dog bites, of which Society is informed, to the County Health Officer.

(4) Severing and delivering to the County Health Officer the head of any animal that dies while under observation for rabies.

d. Operation and maintenance of a safe and adequate shelter for the humane confinement, treatment, and disposal of all animals under the care of said shelter by:

(1) Adhering to all applicable laws or ordinances of the City of Fresno and the State of California.

(2) Installation and use of any and all necessary apparatus and equipment to ensure humane treatment of animals under the care of the Society.

(3) Employment and proper supervision and training of personnel to perform necessary shelter services in the most humane manner. A California

licensed veterinarian shall be responsible for all veterinary care, as provided for in applicable state law.

(4) Operation of said shelter shall be as follows: The normal office hours for stray intake will be 8 a.m. to 5 p.m. Monday through Friday (6 p.m. on Wednesday). The normal hours for reclaims, owner surrenders, and adoptions will be from 10 a.m. to 5 p.m Monday through Friday (6 p.m. on Wednesday). The shelter shall be open to the public Saturdays and Sundays for not less than four (4) hours. The Society may, in its discretion, adjust the opening and closing times based upon the time of the year, however keeping the number of hours the same or greater. Full Service Animal Control will be from 8 a.m. to 5 p.m. Monday through Friday.

Emergency response will be provided from 5 p.m. to 8 a.m. every night and from 8 a.m. to 5 p.m. on Saturdays, Sundays, and Holidays only. The Society may, in its discretion, close the shelter to members of the public during any public holiday that is observed by the City. e. Impoundment of any and all animals in said shelter, whenever picked up or delivered, by the following guidelines:

(1) Unlicensed dogs, cats, and any other live animal legally allowed as personal property, shall be maintained in said shelter for a minimum of six days, not including the day of impoundment, unless a longer or shorter period is authorized by statute in which case such longer or shorter period shall apply, after which time they may be released to a nonprofit, sold or humanely destroyed as allowed by statute.

(2) Licensed dogs shall be maintained in said shelter for a minimum of six (6) days, during which time the Society shall give owners three (3) days' prior notice, in writing, of the dog's impoundment, after which time the dog may be released to a nonprofit, sold or humanely destroyed as allowed by statute.

(3) The Society may sell or release impounded dogs only upon payment of City license fees and proof of rabies vaccination or, in the case of dogs under the age of four (4) months, a signed statement that the new owner will have the dog vaccinated within ten (10) days after the dog is four (4) months old.

(4) The Society shall charge redemption fees and fees for maintenance (boarding) of any impounded animals as required by and set forth by the City's ordinance prior to redemption by the owner. The Society shall retain these fees.

f. Disposal of any and all animals under the care of the Society by:

(1) Redemption of animals claimed by their rightful owners;

(2) Release to a nonprofit pursuant to statute;

(3) Sale of unredeemed animals to new adopted owners for which Society shall retain all monetary proceeds; or

(4) Destruction of such animals as are not disposed of as in (1) through (3) above in any one of the humane methods prescribed by state law.

g. The Society shall provide veterinary services within the City limits for animals under its care on behalf of the City on the following basis:

(1) Emergency veterinary services, including diagnosis and treatment, may be rendered to injured cats and dogs found without their owner in public places within the City limits in accordance with California Penal Code Section 597f.

(2) Any other emergency veterinary services may be rendered in unusual emergency circumstances if the Society deems them absolutely essential to the performance of this Agreement.

(3) The Society shall take all reasonable measures to recover all costs incurred for veterinary services, emergency or otherwise, from animals' owners.

(4) The unrecovered costs for emergency veterinary services provided to animals found within the City limits shall be billed to the City on a quarterly basis in the format set forth in Exhibit "B" attached hereto.

h. The Society shall provide the owners of lost animals and those who find lost animals with the following Informational Services:

(1) The ability to list the animals they have lost or found on "Lost and Found" lists maintained by the pound or shelter.

(2) Referrals to animals listed that may be the animals the owners or finders have lost or found.

(3) The telephone numbers and addressed of other pounds and shelters in the same vicinity.

(4) Advice as to means of publishing and disseminating information regarding lost animals.

(5) The telephone numbers and addresses of volunteer groups that may be of assistance in locating lost animals.

i. The Society shall keep accurate records on each animal taken up, medically treated, or impounded, and such records shall include all of the following information and any other information required by the California Veterinary Medical Board:

(1) The date the animal was taken up, medically treated, euthanized, or impounded.

(2) The circumstances under which the animal was taken up medically treated, euthanized, or impounded.

(3) The names of the personnel who took up, medically treated, euthanized, or impounded the animal.

(4) A description of any medical treatment provided to the animal and the name of the veterinarian of record.

(5) The whereabouts of the animal from the time of possession to the end of the animal's impoundment. These records shall be available for inspection by the public upon request for three (3) years after the date the animal's impoundment ended.

(6) The final disposition of the animal, including the name of the person who euthanized the animal or the name and address of the adopting party. These records shall be maintained for three (3) years after the date the animal's impoundment ends.

Fees charged to the public by the Society in its performance of the Augmented Services, other than as specifically provided for in this Agreement, shall be reasonably established by the Society, subject to the City's prior approval thereof, which approval shall not be unreasonably withheld.

EXHIBIT B - FEE SCHEDULE

1. In compensation for the Augmented Services other than those Services set out in Section 3 below, the Society shall be paid the following sums in the following manner:[3]

   During the 2013-2014 fiscal year, a current year fee not to exceed [$3,230,300] which shall be payable in equal quarterly installments on or before each of July 15, October 15, January 15, and April 15.

2. Each payment hereunder by City shall be contingent upon timely submission to, and review and approval by, the City of the Society's monthly service, fiscal, and complaint reports as stipulated in section IV and Exhibits "C" and "D" to this Agreement.

[3] All current and prepaid fees are subject to the substantiation, support, modification and not-to-exceed limitations provided for in the Agreement.

Exhibit C

Intake													
Animal Type	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**FYTD**
Cats/Kittens: Strays (Public)													
Dogs/Puppies: Strays (Public)													
Other: Strays (Public)													
Cats/Kittens: Owner Surrender													
Dogs/Puppies: Owner Surrender													
Other: Owner Surrender													
Quarantine: Cats/Kittens Strays													
Quarantine: Cats/Kittens Owner S.													
Quarantine: Dogs/Puppies Strays													
Quarantine: Dogs/Puppies Owner S.													
DOA Cats/kittens: Strays (Public)													
DOA Dogs/puppies: Strays (Public)													
DOA Other: Strays (Public)													
DOA Cats/Kittens: Owner Surrender													
DOA Dogs/Puppies: Owner Surrender													
DOA Other: Owner Surrender													
DOA Cats/Kittens: Field (ACO)													
DOA Dogs/Puppies: Field (ACO)													
DOA Other: Field (ACO)													
Cats/Kitten: Field (ACO)													
Dogs/Puppies: Field (ACO)													
Other: Field (ACO)													
Total overall animals handled:													
Intake of LIVE Animals													

Adoptions													
Animal Type													
Cats/kittens													
Dogs/puppies													
Other													
Total													

Offsite Adoptions													
Animal Type													
Cats/kittens													
Dogs/puppies													
Total Adoptions Offsite													
Overall CCSPCA Adoptions													

Euthanasia													
Animal Type													
Cats/kittens (Healthy)													
Dogs/Puppies (Healthy)													
Other (Healthy)													
Cats/Kittens (Treatable-Rehabilitatable)													
Dogs/Puppies (Treatable-Rehabilitatable)													
Other (Treatable-Rehabilitatable)													
Cats/Kittens (Treatable-Manageable)													
Dogs/Puppies (Treatable-Manageable)													
Other (Treatable-Manageable)													
Cats/Kittens (Unhealthy-Untreatable)													
Dogs/Puppies (Unhealthy-Untreatable)													
Other (Unhealthy-Untreatable)													
Cats/Kittens (Owner Request)													
Dogs/Kittens (Owner Request)													
Other (Owner Request)													
Total													

Transferred Out to Rescues													
Animal Type													
Cats/Kittens													
Dogs/Puppies													
Other													
Total													

Reclaims													
Animal Type													
Cats/kittens													
Dogs/puppies													
Other													
Total													

Exhibit D

Quarterly Financial Report

Society for the Prevention of Cruelty to Animals
103 S Hughes Ave
Fresno CA 93706

Fiscal Year:
Quarter:
Period Ending:

REVENUE	$ TO DATE
City Contract	$ -
Total Revenue	$ -

EXPENSES	$ TO DATE
Payroll & Related	$ -
Services & Supplies	$ -
Total Expenses	$ -

EXHIBIT E- REIMBURSEMENT SCHEDULE

Immediately upon expiration or any earlier termination hereof while Society is in breach or default, the Society shall reimburse the City for unearned fee prepayments according to the following schedule:

Society shall reimburse to City the total of all prepayments made hereunder.

Immediately upon expiration or any earlier termination hereof while Society is not in breach or default, the Society shall reimburse the City for unearned fee prepayments.

EXHIBIT F

DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☐
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☐
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☐
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	☐	☐
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	☐	☐
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	☐	☐
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

_____

_____

_____

_____

_____

_____

_____

☐ Additional page(s) attached.

_____
Signature

_____
Date

_____
(name)

_____
(company)

_____
(address)

_____
(city state zip)