

AGREEMENT FOR ANIMAL SHELTER SERVICES
BETWEEN THE CITY OF ORANGE COVE AND
FRIENDS OF ORANGE COVE ANIMAL SHELTER

This AGREEMENT ("AGREEMENT"), is made and entered into this ____ day of _____ 20__, by and among the City of Orange Cove, a California municipal corporation ("CITY") and FRIENDS OF ORANGE COVE ANIMA SHELTER, a non-profit organization, ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to provide the services and entities to CONSULTANT as specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by

a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have

the right to reim-bursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT.

However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or willful acts or omissions.

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

- (a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.
- (b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY.
- (c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.
- (d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY:

City Manager
City of Orange Cove
633 Sixth Street
Orange Cove, California 93646

To CONSULTANT: Friends of Orange Cove Animal Shelter

ATTN: President

c/o ~~Adriana-Figueroa-Bruce-Jolie Wiggins~~

_850 E Hampton Way

_Fresno, California 93704

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Fresno. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California, in Fresno, California.

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into

between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If an term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF ORANGE COVE

CONSULTANT:

By _____
Rudy Hernandez, City Manager
(Authorized Officer)

By _____

By _____
APPROVED AS TO FORM:
Daniel T. McCloskey, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

1. CONSULTANT shall operate on a 24/7 basis a shelter at the City of Orange Cove Animal Shelter and shall operate pursuant to a written operations manual, a copy of which, is being provided to the City for approval within thirty days of the effective date of this Agreement.
2. CONSULTANT shall take possession of any injured dog that the Animal Control Officer of the City of Orange Cove has captured or otherwise transported to a veterinarian in the case of an injured animal or dog. In the case of an injured dog, CONSULTANT shall accept from the veterinarian any injured dog that had been placed with the veterinarian by the Animal Control Officer of the City of Orange Cove.
3. CONSULTANT shall accept for shelter all dogs taken to the shelter by the Animal Control Officer of the City of Orange Cove.
4. CONSULTANT shall deliver any dog or animal injured while in the CONSULTANT's care and possession immediately to a designated veterinarian for treatment, evaluation and possible euthanasia. If the dog is subsequently released by the veterinarian then CONSULTANT shall accept possession and care for that injured dog so released.
5. CONSULTANT shall not have the right to place for adoption any dog that was deemed to be quarantined for a vicious attack on another animal or human being. Any dog quarantined by CONSULTANT as a vicious dog, and not otherwise adopted or provided for, shall be transported by the CONSULTANT to a designated veterinarian for euthanasia.
6. CONSULTANT shall hold all dogs delivered to shelter for four (4) days and, during that time make every reasonable attempt to contact or determine the dog's owner. After the four (4) days have elapsed then CONSULTANT shall have ninety (90) days in which to place the dog through adoption or some other process. After that ninety (90) days have elapsed that dog, if not otherwise adopted or rehomed, shall be transported by the CONSULTANT to a designated veterinarian for euthanasia.
7. CONSULTANT shall accept or house no more animals than what the shelter can humanely house, and, CONSULTANT shall have no more than fifty (50) kennels at the shelter and six (6) kennels shall be reserved for the use of the Animal Control Officer of the City of Orange Cove.
8. CONSULTANT shall not be responsible for collection of owner surrender animals, and, the Animal Control Officer of the City of Orange Cove shall be responsible for the collection of an owner surrender animal upon the payment by the owner of the surrender fee to City Hall.
9. CONSULTANT shall be responsible for veterinarian fees for all animals held beyond the four (4) day initial holding period including euthanasia fees, unless, CONSULTANT waives the ownership of any such abandoned animal and forfeit the animals to the Animal Control Officer of the City of

Orange Cove and the City shall be responsible for the veterinarian fees including fees for euthanasia.

10. CONSULTANT shall not pick up any animals or dogs outside the shelter premises or from other non-profit rescue entities. CONSULTANT shall only use the shelter for housing and caring for animals found in the City's jurisdiction.

11. CONSULTANT agrees and acknowledges that the animal population at the shelter is beyond capacity. CONSULTANT shall have ninety (90) days to adopt out or otherwise find homes for fifty percent (50%) or more of the current animals residing at the shelter on the effective date of this Agreement. After the expiration of ninety (90) days, CONSULTANT shall, to the extent that there are still more than fifty percent (50%) of animals residing at the shelter, bring the total population to or below the fifty percent (50%) requirement by transporting enough animals to a designated veterinarian for euthanasia.

12. CONSULTANT shall adequately supervise any volunteers allowed in the shelter. No volunteers shall be allowed access to the shelter without an employee of CONSULTANT present at all times and no volunteers shall have keys to shelter.

13. CONSULTANT shall shelter and care for the animals in compliance with all Federal, State and local statutes and ordinances.

14. CONSULTANT shall maintain the shelter, grounds and kennels in a humane and sanitary condition at all times.

15. CONSULTANT shall maintain shelter hours for the public adoption period between 8:00 a.m. to 5:00 p.m. Monday through Friday.

16. CONSULTANT shall always have at least one employee or Board Member present during volunteer activities at the shelter including weekends.

17. CONSULTANT shall vaccinate all impounded animals as needed upon that animal being admitted to the shelter.

18. CONSULTANT shall quarantine and monitor animals in accordance with Federal, State, County and City law and with the approval of the Animal Control Officer.

19. CONSULTANT shall provide, pay for or arrange for immediate emergency medical care to sick and injured animals that are injured and/or in the CONSULTANT care.

20. CONSULTANT shall employ and enlist qualified persons, officials, agents, employees and volunteers to perform CONSULTANT's obligations under this Agreement. All volunteers shall sign waivers of liability and parents and/or legal guardian shall sign waivers of liability for any volunteer under the age of eighteen.

21. CONSULTANT shall adopt written policies, practices and personnel rules that are approved by the CONSULTANT's board, conform to the industry's best practices and comply with Federal, state and local laws and ordinances.

22. CONSULTANT shall submit a statistical report every month to the City that provides all of the following information:

1. Number of dogs received by Owner Surrender, City Animal Control or other since the last report.
2. Number and name of dogs adopted by individuals , including name of adopting persons.
3. Number and name of dogs transferred or pick up by other non-profit rescue entities.
4. Number and name of dogs euthanized this period.
5. Number and name of dogs injured while in CONSULTANT's care.
6. Number and name of dogs surrendered as injured.
7. Number and name of dogs vaccinated this period.
8. Number and names of dogs quarantined this period.
9. Amount of money donated and name of donor who contributed to CONSULTANT this period.
10. Types of fundraising done by CONSULTANT this period.
11. Amount and type of expenses paid out this period by CONSULTANT.
12. List and names of all volunteers this period.
13. Number of hours donated by all volunteers this period.
14. Any changes in the makeup of the CONSULTANT's Board or officers this period.
15. Any correspondence from the FTB, State of California Attorney General or the Internal Revenue Service concerning CONSULTANT's status as a non-profit corporation and as a tax-exempted entity.
16. Amount of city dog license fees collected.
17. All complaints filed with the CONSULTANT regarding CONSULTANT's operation of the shelter and care of animals during this period.

23. CONSULTANT shall provide City with copies of CONSULTANT's filed federal and state tax returns within thirty (30) days after the due date for such returns.

EXHIBIT "B"

COMPENSATION

- a) City agrees to allow CONSULTANT to operate the Shelter currently located on City property and will provide access to CONSULTANT's employees and volunteers during normal business hours, including weekends, and access to CONSULTANT's board members twenty-four (24) hour per day seven (7) days per week.
- b) City will continue to provide maintenance of the building, including electrical and plumbing repair;
- c) City will provide sewer back up services;
- d) City will ensure electrical panel can support a water heater, washer and dryer;
- e) City will maintain property insurance on the building;
- f) City will pay the utilities for the property;

EXHIBIT "C"

INSURANCE

A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager or City Attorney, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

- (1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.
- (3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.
- (4) Errors and omissions liability insurance appropriate to the CONSULTANT's profession.

2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

- (1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- (4) Errors and Omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this

AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this paragraph 15 shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability and Automobile Liability Coverages.

(1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials or employees.

(2) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(3) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section.

The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.
2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.
3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.

Disclaimer - 2000