

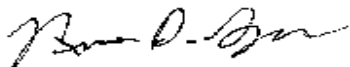
# City of Calistoga

## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Richard Spitler, City Manager  
**DATE:** June 2, 2015  
**SUBJECT:** Resolution Authorizing the City Manager to enter into a Professional Services Agreement with Petaluma Animal Services Foundation for Animal Control Services for the City of Calistoga in the Amount not to exceed \$49,400 on an Annual Basis

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**APPROVAL FOR FORWARDING:**




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Richard D. Spitler, City Manager

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1 **ISSUE:** Resolution Authorizing the City Manager to enter into a professional services  
 2 agreement with Petaluma Animal Services Foundation for Animal Control Services in an  
 3 amount not to exceed \$49,400 on an annual basis.

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 5 **RECOMMENDATION:** Adopt resolution.

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 7 **BACKGROUND :** On April 21, 2015 the City Council directed the City Manager to  
 8 negotiate a professional services agreement with Petaluma Animal Services Foundation  
 9 (PASF) to undertake animal control services for the city of Calistoga. This would include  
 10 field services and an animal shelter in Petaluma. A proposed contract would be in the  
 11 form of a three year professional services agreement.

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 13 The City Manager has prepared an agreement (see Attachment 1) which has been  
 14 approved by the PASF Board. The Calistoga City Council is to review the agreement  
 15 and authorize the City Manager to sign it, if deemed acceptable.

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 17 In a separate agenda item, a resolution is presented to designate PASF as the  
 18 "Enforcement Agency" to administer and enforce the provisions of Article 6.04 (Animal  
 19 Control) of the Calistoga Municipal Code. In addition, the PASF Executive Director is  
 20 designated as the "Animal Control Officer". This resolution also establishes the fee  
 21 schedule to recover costs associated with providing services related to this agreement.  
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23 **DISCUSSION:** Attachment 1 includes the draft agreement which has PASF providing  
24 the following animal control services:

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26 **Shelter Services:**

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28 The PASF shelter is located at 840 Hopper Street, Petaluma, at the Public Works  
29 Corporation Yard in the city of Petaluma. It is located off Lakeville Street next to Hwy  
30 101. A Google Map search indicates under ideal driving conditions it is 34 Miles from  
31 Calistoga about 46 minutes of driving time.

32  
33 The shelter would be open Tuesdays through Fridays 1:00pm to 6:00pm and Saturdays  
34 from 12:00pm to 6:00 pm. Redemptions can also be scheduled on Sundays and  
35 Mondays.

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37 A drop off kennel has been located in the sally port behind the Calistoga Police  
38 Department. The animal will be held at this location until the animal can be picked up  
39 and taken to the shelter.

40  
41 **Field Services:** PASF would provide on-call field services for domestic animals in the  
42 city limits during regular business hours. Accordingly, PASF would respond to services  
43 for stray, injured and deceased domestic animals and will take them to the shelter. Dog  
44 bites and possible rabies issues would be referred to the Sherriff's Animal Services  
45 division.

46  
47 They propose a response time of 60 minutes. Non-emergency issues would be  
48 responded to within 24 hours.

49  
50 The Police Department will coordinate calls for service with PASF.

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52 **FISCAL IMPACT:**

53 The proposed three year contract will have an annual cost of \$49,400. The contract  
54 provides for PASF to keep any license and other fees collected while providing services.

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56 **ATTACHMENTS:**

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58 1. Resolution and Professional Services Agreement for Animal Control Services

**RESOLUTION NO. 2015-XXX**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH PETALUMA ANIMAL SERVICES FOUNDATION FOR ANIMAL CONTROL SERVICES FOR THE CITY OF CALISTOGA IN AN AMOUNT NOT TO EXCEED \$49,400 ON AN ANNUAL BASIS**

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**WHEREAS**, On September 3, 2013 the City Council directed the City Manager to prepare a request for proposals for animal control and shelter services for Calistoga and to send it to various groups or agencies that might be interested in providing these services; and

**WHEREAS**, In May 2004 a Request for Proposals was sent to several agencies and groups that provide animal control services and animal shelters. Three proposals were received based upon this solicitation; and

**WHEREAS**, after a review of each proposal at public meeting, the City Council, at its April 21, 2015 regular meeting, directed the City Manager to negotiate a professional services agreement with the Petaluma Animal Services Foundation to provide animal shelter and field services within the city limits of Calistoga; and

**WHEREAS**, it is the public interest that the city of Calistoga obtain animal control and shelter services to serve the needs of its animal population and their owners as soon as is practicable.

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Calistoga hereby authorizes the City Manager to execute the professional services agreement with the Petaluma Animal Services Foundation to undertake animal control services for the City of Calistoga in the amount of \$49,400 on an annual basis as shown in Exhibit A to this resolution.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **2nd day of June, 2015**, by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**

\_\_\_\_\_  
**CHRIS CANNING, Mayor**

**ATTEST:**  
  
\_\_\_\_\_  
**KATHY FLAMSON, City Clerk**

**PROFESSIONAL SERVICES AGREEMENT  
FOR ANIMAL CONTROL SERVICES  
WITH PETALUMA ANIMAL SERVICES FOUNDATION**

THIS AGREEMENT is entered into as of the \_\_\_\_ day of June, 2015, by and between the CITY OF CALISTOGA, herein called the "City," and Petaluma Animal Services Foundation, a nonprofit organization, herein called the "Contractor" (City and Contractor may be referred to individually or collectively as "Party" or "Parties").

Recitals

WHEREAS, California law requires that cities provide certain services for the prompt and humane care of injured animals; and

WHEREAS, the welfare of persons in Calistoga requires the control of animals at large; and

WHEREAS, City solicited proposals for the provision of animal control services and has determined that Contractor is the most suitable entity to provide animal control services; and

WHEREAS, Contractor hereby warrants to the City that Contractor has the qualifications, experience and facilities to provide such services described in Section 3 of this Agreement in a thorough, competent and professional manner; and

WHEREAS, City desires to retain Contractor pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the Parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Contractor. The Contractor shall assign Contractor's Executive Director, currently Jeff Charter, to have overall responsibility for the progress and execution of this Agreement for Contractor.

(1)

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Contractor shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Contractor are to commence no sooner than June 3, 2015 and be completed not later than June 30, 2018, at which time the Parties shall meet and confer to evaluate the terms of the Agreement in consideration of amending and/or extending the Agreement.

C. Standard of Quality. City relies upon the professional ability of Contractor as a material inducement to entering into this Agreement. All work performed by Contractor under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

D. Standard of Performance. Contractor shall assign only competent personnel to perform services pursuant to this agreement. City may request retraining or reassignment of Contractor employees, volunteers or subcontractors that have failed to perform the Services in accordance with this Agreement. The Contractor agrees to give reasonable consideration to such requests and to notify the City concerning action taken in response to the request. The Contractor shall be responsible for investigating complaints against personnel engaged in the performance of the animal control services pursuant to this Agreement and for taking any necessary corrective action in the event of a sustained finding of misconduct.

E. Background Checks. Each person or entity engaged in the performance of the Services, including, but not limited to, Contractor's employees, volunteers, subcontractors, and subcontractor employees must be a United States citizen or have a legal right to work in the United States. The Contractor must verify citizenship or legal right to work in the United States and retain an I-9 form for all persons or entities engaged in the performance of the Services. The Contractor must verify the employment eligibility and identity documents presented and record the document information on the Form I-9 for all persons to be engaged in the performance of the Services before they commence performance of the Services. No person designated by Contractor to perform animal control services may have been convicted of a felony or a crime relating to theft, violence, sexual misconduct or a violation of the California Health and Safety Code. Any violation of this provision shall constitute a default subject to termination of this Agreement.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, shall be at a fixed rate of forty nine thousand four hundred dollars (\$49,400) per year, paid in equal quarterly installments of twelve thousand three hundred and fifty dollars (\$12,350). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment. In addition Contractor shall retain fees collected in

accordance with City animal control regulations as set forth in Chapter 6.04 of the Calistoga Municipal Code and any resolutions relating to these fees and charges.

B. Timing of Payment. Contractor shall submit itemized quarterly statements for work performed. City shall make payment for services rendered within thirty (30) days after approval of the invoice as meeting the all requirements of this Agreement by the Project Manager.

C. Changes in Compensation. Contractor will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Contractor.

E. No Overtime or Premium Pay. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Contractor shall not receive a premium or enhanced pay for work performed on a recognized holiday. Contractor shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Contractor agrees to testify at City's request if litigation is brought against City in connection with Contractor's work product. Unless the action is brought by Contractor or is based upon Contractor's negligence, City will compensate Contractor for the preparation and the testimony at Contractor's standard hourly rates, if requested by City and not part of the litigation brought by City against Contractor.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Contractor. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Contractor shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Contractor to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, *quantum meruit*, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of Contractor are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if

any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Contractor under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Contractor may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Contractors, Specialists or Experts. Contractor will not employ or otherwise incur an obligation to pay other Contractors, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Contractor covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Contractor's performance of services under this Agreement, or be affected in any manner or degree by performance of Contractor's services hereunder. Contractor 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. Contractor agrees at all times to avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of this Agreement.

B. Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Contractor or otherwise in the event of any default or breach of the City, or for any amount which may become due to Contractor or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Contractor hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Contractor, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Contractor's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778.

This indemnification obligation is undertaken in addition to, and shall not be limited in any way by any limitation on the amount or type of damages or compensation payable by or for Contractor under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Contractor and shall survive and continue to bind the parties after termination/completion of this Agreement for the full period of time allowed by law.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

13. Contractor Not an Agent of City. Contractor, its officers, employees and agents shall not have any power to bind or commit the City to any decision, 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.

14. Independent Contractor. It is expressly agreed that Contractor, in the performance of the work and services agreed to be performed by Contractor, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Contractor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor'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 Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City.



15. Compliance with Laws.

A. General. Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Contractor to practice its profession and perform the services under this Agreement. Contractor shall maintain a City business license. The City is not responsible or liable for Contractor's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Contractor certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Contractor and Contractor's subcontractors (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Contractor certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Contractor's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Contractor and Contractor's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Contractor's workers' compensation insurance policy which arise from the work performed by Contractor for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information to any person or entities other than the City without prior written authorization from the City Manager, except as may be required by law.

Contractor, 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 Contractor gives City notice of such court order or subpoena.

If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

Contractor shall promptly notify City should Contractor, 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 Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Contractor to defend itself from any suit or claim.

17. Assignment; Subcontractors; Employees.

A. Assignment. Contractor shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Contractor shall be responsible for employing or engaging all persons necessary to perform the services of Contractor hereunder. No subcontractor of Contractor shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Contractor, and Contractor agrees to be responsible for their performance. Contractor shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Contractor fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

C. Subcontractor Requirements. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement, including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City in the same manner and to the same extent as Contractor is bound to the City under this Agreement. Contractor further agrees to include these same provisions with any sub-

subcontractor and to furnish a copy of the indemnity and insurance provisions of this Agreement to the subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the City.

18. Insurance.

A. Minimum Scope of Insurance. Contractor and all of Contractor's employees, subcontractors, and other agents shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below:

(1) Contractor agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Contractor agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor or by its employees, subcontractors, or subcontractors. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Contractor:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers (Additional Insureds) are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Contractor shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

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

(9) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insureds. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(10) The limits of insurance required in this Agreement may be satisfied by combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City and shall not reduce the limits of liability. Policies contain any self-insured retention provisions shall provide or be endorsed to

provide that the self-insured retentions may be satisfied by either the named insured or the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Contractor shall furnish the City with original Certificate(s) of Insurance verifying Contractor's receipt of the insurance coverage required herein. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

F. Material Breach. If Contractor fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, City may purchase the required insurance coverage, and without further notice to Contractor, may deduct from sums due to Contractor any premium costs advanced by City for such insurance. These remedies shall be in addition to any other remedies available to City.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon thirty (30) days' written notice to Contractor.

B. If Contractor fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of this Agreement by Contractor.

C. Alternatively, if Contractor is in default under the terms of this Agreement, the City may, but has no obligation to, give notice to Contractor of the default and include the timeframe in which Contractor may cure the default. During the period of time that Contractor is in default, the City may, in its sole discretion, either: (1) hold all invoices and proceed with payment on the invoices when the default is cured, or (2) may elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not timely cure the default, the City may take necessary steps to terminate this Agreement.

D. In the event this Agreement is terminated by City without cause, Contractor shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

E. Upon termination of this Agreement with or without cause, Contractor shall turn over to the City Manager immediately any and all copies of studies, sketches,

drawings, computations, and other data, whether or not completed, prepared by Contractor or its subcontractors, if any, or given to Contractor or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Contractor, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provision of this Agreement. Contractor will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Contractor and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be personally delivered, sent by reputable overnight courier, facsimile or electronically and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Section. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City: City Clerk  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Fax: (707) 942-0732  
Email: KFlamson@ci.calistoga.ca.us

If to Contractor: Executive Director  
Petaluma Animal Services Foundation (PASF)  
840 Hopper Street  
Petaluma, CA, 94952  
Fax:  
Email: jeff@petalumaanimalshelter.org

26. Contractor's Books and Records.

A. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Contractor will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Contractor will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. Unauthorized Aliens. Contractor 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 Contractor 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, Contractor 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.

30. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Contractor.

31. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. 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 Contractor shall not constitute a waiver of any of the provisions of this Agreement.

32. 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 not been contained herein.

33. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work

34. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

35. News Releases/Interviews. All Contractor and subcontractor news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

36. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the



parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

37. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

CONSULTANT

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST:

By: \_\_\_\_\_  
City Clerk

EXHIBIT A:  
City of Calistoga and Petaluma Animal Control Services Professional Services Agreement  
Scope of Work

1. ON-CALL ANIMAL CONTROL SERVICES AND STAFFING.

A. On-Call Emergency Response. Contractor shall provide City with qualified animal control officers who shall be dispatched and respond to any and all calls for domestic animal, including community cats, and domestic animal-related emergencies from Police Dispatch. An animal-related emergency involves a domestic animal that poses a threat to the safety of persons, other animals, or itself, and includes severely injured or sick animals that require humane transportation to veterinary care or euthanasia.

Said animal control officers shall be available to respond to calls for service twenty-four (24) hours a day, seven (7) days a week, including weekends and holidays. Said animal control officers shall arrive to the scene on public or private property in the city limits of Calistoga within sixty (60) minutes of receiving a call for service from Police Dispatch and shall humanely capture, control, secure and convey stray, sick, injured and deceased domestic animals to the City's designated shelter at 840 Hopper Street, Petaluma, CA.

B. Ongoing Services. Contractor shall provide City with qualified animal control service officers who, as provided for in Calistoga Municipal Code Chapter 6.04 (Animal Control) and any implementing resolutions, shall provide all of the following services:

- (1) Establish and administer the licensing of dogs as may be amended from time to time;
- (2) Collect fees related to impound, surrender, dog licensing, and related enforcement activities;
- (3) Identify and contact owners of impounded animals and make arrangements for their return.
- (4) Assist City Police in animal-related matters, including but not limited to: removal of animals from streets affecting traffic, investigations of vicious animals, and investigations of animal bites, animal cruelty, neglect and/or inhumane animal treatment. Such assistance may include providing support to City Police in building animal-related criminal cases.
- (5) Submit quarterly written reports to Chief of Police detailing the services provided that quarter and an account of fees collected. The format and extent of information will be provided by Police Chief.
- (6) Provide advice, materials, and/or assistance in: (a) lawfully trapping animals on private property, and (b) the rescue of animals from roofs, trees, fences, storm drains, and other at, above, or below ground locations within reasonable safety limits.
- (7) Make available animal control officers to attend and testify in court or administrative hearings. The costs for these appearances shall be the sole responsibility of the Contractor.

C. Excluded Services. Nothing in this Agreement shall require Contractor to: (1) provide for a routine patrol for stray dogs, (2) provide services for wildlife (such as deer, opossums, and raccoons), pests (such as insects, mice or rats), or non-domestic animals (such as horses, bovines, and sheep), or (3) respond to or investigate animals suspected to be rabid and/or

that have bitten a person or other animal (which shall be handled by Napa County Sheriff's Office). Citizens wishing to provide voluntary transport of a stray, sick, injured and deceased animals may be directed by Contractor to the City's designated shelter or, if appropriate, to an approved, local veterinarian for emergency care or euthanasia.

D. Animal Control Officers. Subject to the terms and conditions of this Agreement, the animal control services officers provided by Contractor shall be certified as such under Penal Code Section 832 and shall be designated as and vested with the authority of "Animal Control Services Officers" for the purposes of Calistoga Municipal Code Chapter 6.04 (Animal Control). As such, the animal control services officers provided by Contractor may enforce animal-related state and local laws and regulations related to animals, issuing citations when appropriate. Contractor shall maintain all training records for its animal control services officers.

## 2. ANIMAL SHELTER FACILITY, EQUIPMENT, SERVICES, AND STAFFING.

A. Animal Shelter Facility and Equipment. Contractor shall provide City with an animal shelter facility at 840 Hopper Street, Petaluma, CA, which shall be equipped in the manner necessary to provide the services required by this Agreement. Prior to operating any animal shelter, the facility shall be inspected and approved by the City to ensure that it meets the requirements of this Agreement, related City codes and applicable laws.

The Contractor shall provide the necessary equipment to outfit the animal shelter and to enable the animal shelter operators to perform their duties as set forth in this Scope of Work, which may include, but not be limited to, kennels, examination tables, equipment and food storage, uniforms, identification badges, and communication devices.

City may conduct periodic inspections of the animal shelter facilities, equipment and other property furnished by Contractor for use in performing the services under this Agreement. If the City finds that repairs or changes are required in connection with this Agreement, the Contractor shall, within thirty (30) days of receipt of notice from the City, place in satisfactory condition all of such animal shelter facilities, equipment and other property, correct all defects therein, and make good on all damages. If Contractor fails to correct any such damage at Contractor's expense, the City may treat any failure as a default subject to termination under this Agreement.

B. Animal Shelter Services. Contractor shall provide City with animal shelter services and qualified animal shelter operators who shall maintain the animal shelter facilities, equipment and other property consistent with the following requirements. Specifically, Contractor shall:

(1) Staffing. Adequately train and staff the animal shelter facilities with qualified animal shelter operators, in accordance with state law.

(2) Public Hours. Staff and hold open the animal shelter facilities to the public, at a minimum, from 1:00 PM to 6:00 PM, Tuesdays through Fridays; 12:00 PM to 6:00 PM on Saturdays. Redemptions can also be scheduled on Sundays and Mondays with the on-duty animal control officer.

(3) Basic Services. Accept, shelter, feed, provide routine in-take medical and emergency care, and otherwise provide for abandoned, stray or unwanted domestic animals, on a twenty-four (24) hours a day, seven (7) days a week basis, that are surrendered by Calistoga residents, delivered by animal control officers, or delivered by City personnel for the minimum impoundment and stray hold periods established in the Calistoga Municipal Code and state law.

(4) Sanitation Standards. Adhere to and utilize the UC Davis Medicine guidelines for sanitation and cleaning protocols of the shelter facility and animal storage and treatment areas.

(5) Quarantines. Provide a means of isolating animals with Police holds or quarantines, or animals held in protective custody in a manner that will not expose other sheltered animals or the public at risk. Contractor shall document and monitor all animals under quarantine and, when necessary, obtain a lab sample of the animal and prepare the necessary paperwork to accompany the sample to the Health Department for testing.

(6) Euthanasia. Provide for humane euthanasia if deemed appropriate by the attending, licensed veterinarian.

(7) Disposal. Provide for the lawful disposal of the remains of animals, including the cremation of euthanized animals.

(8) Owner Search and Notices. Make reasonable attempts to find the rightful owner of animals in their custody, including scanning animals for the presence of a microchip and initiating a search for the owner through the microchip vendor. Contractor shall notify owners as established by state or local law, rule or ordinance or, if none, as set forth by Contractor.

(9) Adoptions. Make reasonable adoption opportunities available for animals after the mandatory stay period has run and process all owner redemptions and adoptions of animals.

(10) Licensing. Provide for licensing of dogs consistent with the requirements of the Calistoga Municipal Code.

(11) Coordination with Animal Control. Liaison with City's designated animal control officer(s), including providing training and updates to the animal control officer(s) and Calistoga Police personnel on the basic policies and procedures of the animal shelter.

(12) Access. Provide, at a minimum, access, at all times, to the City's designated animal control officers and Calistoga Police with access to exterior drop-off kennels at the animal shelter and one (1) exterior drop-off kennel at the Calistoga Police Department or other location as deemed appropriate by the City.

(13) Programs. Provide programs and services that reduce euthanasia rates and shelter overcrowding while providing proper and compassionate care for the animals entrusted to them. Contractor may provide other programs it deems appropriate, such as low cost spay and neuter programs, foster care programs, training and behavioral programs, public education, and post adoption support and advice.

(14) Vaccinations. Provide for standard vaccinations of cats and dogs upon intake.

(15) Volunteers. Contractor may maintain an active volunteer program, which shall include a background and screening process, training, coordination and supervision by Contractor.

C. Veterinary Services. Contractor shall be responsible for hiring or (sub)contracting with one or more veterinarian(s) or other subcontractors in order to carry out its duties under this Agreement. As provided for in this Agreement, Contractor shall incorporate provisions of this Agreement, including but not limited to the insurance and indemnification clauses, into any and all agreements with said veterinarian(s) or other subcontractors. Prior to executing any such agreement, Contractor shall provide City with a copy of the agreement for review and

confirmation that the terms and conditions of this Agreement have been satisfied and that the veterinarian(s) or other subcontractors are qualified to undertake the activities required under this Agreement.

D. Housing of Animals. Contractor will be solely responsible for the costs associated with the care and feeding of animals during the required holding periods and for any time periods beyond the minimum impoundment periods established in Calistoga Municipal Code Chapter 6.04.

E. Excluded Services. Nothing in this Agreement shall require Contractor to be responsible for livestock (such as horses, bovines, or sheep) or wild animals (such as deer, possums, raccoons, foxes, etc.) or exotic animals (birds, snakes, reptiles, etc.).

### 3. IMPOSITION AND COLLECTION OF FEES.

A. Imposition of Fees. As provided for above, Contractor shall impose fees related to impound, surrender, adoption, dog licensing, and related enforcement activities on the responsible party. Said fees shall be set by the City pursuant to Calistoga Municipal Code Chapter 6.04 (Animal Control). The maximum fees for service shall be set by the City pursuant to Calistoga Municipal Code Chapter 6.04 (Animal Control). City shall provide Contractor with a schedule of all adopted fees and any updates or amendments to said fees, which shall be attached to this Agreement and made a part thereof. Contractor shall set and charge fees consistent with and, in no event, in excess of these adopted fee schedules.

B. Collection of Fees. Contractor shall collect applicable fees for animal control services from the responsible party. To the extent that, following a diligent effort to identify a responsible party, a responsible party cannot be determined, the fee will be treated as an operating cost of Contractor, and Contractor shall be solely responsible for any and all such fees. In no event shall City reimburse Contractor for expenses that have been paid by another party or for the services of volunteers.

### 4. EQUIPMENT.

A. Contractor's Equipment. The Contractor shall provide the necessary equipment for the designated animal shelter, the animal control officers and Contractors' other agents to perform their duties as set forth in this Scope of Work, which may include, but not be limited to, an animal control vehicle, traps, safety equipment, medications, pharmaceuticals, collection equipment, uniforms, identification badges, and communication devices.

B. City's Communication System. The City will seek to allow programming of Calistoga Police Department radio equipment to allow Contractor's animal control officers to communicate with the Calistoga Police Department dispatch center on at least one (1) handheld radio per animal control officer and one (1) mobile radio per animal control vehicle. Until such time that this approval and programming occurs, the City shall provide at least one (1) handheld Calistoga Police two-way radio for shared use by animal control officers. Contractor shall ensure

that any and all employees utilizing police radios have received proper training from the Calistoga Police Department in the use and care of the equipment.

## 5. COMMUNICATIONS AND RECORD KEEPING.

A. Notification. Contractor's animal control officers shall notify the Calistoga Police Department dispatch center via radio (when this capability is provided) whenever they come into the City of Calistoga for: (1) a response to a call for service, or (2) follow-up investigation of a previously reported incident. Calistoga Police Dispatch will create an event in their CAD/RMS system for all calls for service or investigation activities initiated by an animal control officer.

Contractor's animal shelter operators shall maintain operations logs and records consistent with the prevailing recordkeeping practices in the industry. Contractor's recordkeeping obligation shall include drafting and maintaining documentation on each animal brought in, including an inventory of the animal type, breed, sex, license tag number (if applicable), microchip information (if available), date animal was received, from whom the animal was received, the date a notification letter was sent, and the final disposition of the animal. Contractor shall also keep and maintain records outlining all activities performed including but not limited to general services, adoptions, euthanasia procedures, surgical procedures, vaccinations, accounts payable and receivable, programs, events, presentations and any other activities that outlines or illustrates the services provided by Contractor.

B. Updates. Animal control officers shall provide radio status updates whenever conditions change, such as: (1) arrival on the scene; (2) change of location; (3) action being taken; (4) no further assistance needed; and (5) call completed. A disposition must be provided, such as arrested, cited, warned, advice given, or report taken whenever a call is completed.

C. Written Reports. Animal control officers shall prepare written reports of all service calls, which shall be documented on Calistoga's Police Department's CAD/RMS application(s). Calistoga Police Department will provide training to Animal Control Officers on the proper use of their CAD/RMS application(s). If possible, dog licenses and animal-related permits should be readily searchable and/or accessible for use by animal control officers and City staff in the performance of their duties.

D. Inspection. All of Contractor's records shall be made available for inspection by the City as requested.

## 6. REVIEW OF SERVICES.

The Chief of Police of the Calistoga Police Departments, or his or her designee, will meet at least once per fiscal year with the Contractor's Executive Director to discuss animal control services, including but not limited to, adherence to this Scope of Work.