

RECEIVED

Agenda Items: ID#20-00684 (1 - T)

Date: 6/25/2020

2020 JUN 23 P 4: 35

CITY OF FRESNO  
CITY CLERK'S OFFICE

**FRESNO CITY COUNCIL**



## Additional Information

### Agenda Related Item(s) – ID#20-00684 (1 -T)

#### Item(s)

Approval of a Fourth Amendment to the Agreement Entered Between the City of Fresno and the Central California Society for the Prevention of Cruelty to Animals in the Amount of \$5,345,000 for a One-Year Term Beginning July 1, 2020, to June 30, 2021.

**Contents:** REVISED Fourth Amendment to CCSPCA (A paragraph was missing on page 2.)

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

## **FOURTH AMENDMENT TO AGREEMENT**

THIS FOURTH AMENDMENT TO AGREEMENT (Fourth Amendment) made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020, amends the Agreement entered into between the City of Fresno, a municipal corporation (City) and the Central California Society for the Prevention of Cruelty to Animals, a duly organized and qualified California nonprofit public benefit corporation (Society).

### **RECITALS**

WHEREAS, City and Society entered into an Agreement, effective March 1, 2014, wherein Society provides City with all animal control, pound master, veterinary and animal sheltering services, facilities and related activities authorized and required by applicable law (Agreement); and

WHEREAS, the Agreement provided for an initial term through June 30, 2015, and three one-year renewal terms ending on June 30, 2018; and

WHEREAS, City and Society amended the Agreement to provide for a one-year extension ending on June 30, 2019, and to allow the parties additional time to negotiate terms for a future agreement (Amendment); and

WHEREAS, City and Society amended the Agreement in order to increase Society's funding by \$184,920.58 to cover salary increases and additional costs to address the minimum wage increases effective January 2018 and January 2019, and allow the Society to maintain its current service levels for the one-year extension ending June 30, 2019 (Second Amendment); and

WHEREAS, City and Society amended the Agreement to provide for a one-year extension ending June 30, 2020 (Third Amendment); and

WHEREAS, City and Society desire to amend the Agreement to provide for a one-year extension ending June 30, 2021, to allow the City time to build its new animal shelter and award an animal control services contract to a new service provider.

### **AMENDMENT**

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein conditioned, and for other good and valuable consideration hereby acknowledge, the parties agree that the aforesaid Agreement be amended as follows:

1. Section I of the Agreement entitled "Term" is deleted in its entirety and replaced as follows:

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

Beginning at the expiration of the Initial Term, the term of this Agreement may be extended upon the successive appropriation by City Council

(Renewal Term) of amounts sufficient to make payments due hereunder during the successive Renewal Term, for up to seven Renewal Terms. Each Renewal Term and the scheduled payments hereunder shall correspond with City's Fiscal Period. The amount of fees due, other than prepaid fees, shall be fixed by the parties' annual written agreement added as a renewal addendum hereto, unless either party shall give written notice of non-renewal at least ninety days prior to expiration of the then current Initial or Renewal term, subject to such termination rights as are provided in Section V below.

The Renewal Term may be extended by up to 90 days (Extension) at a cost of \$1,350,000 (Extension Fee). City must provide Society with 90 days' notice prior to the beginning of the first day of the Extension (Extension Notice). City may request up to two Extensions of the Renewal term, for a total of 180 days. City must provide its first Extension Notice on or before April 1, 2021 and its second Extension Notice on or before July 1, 2021.

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

2. Exhibit "B" shall be deleted in its entirety and replaced with the revised Exhibit "B" attached hereto.

3. Section III of the Agreement entitled "Fees" shall be amended to include section 3, immediately after section 2(e) as follows:

"3. In the event City does not timely request an Extension Notice as set forth in Section I and additional time is needed, City will pay \$2,700 per day, as Liquidated Damages, to Society in addition to the Extension Fee."

4. Section IV of the Agreement entitled "Reports/Funding Requests" shall be amended to include section 2, following immediately after Section IV(1)(e) 2 as follows:

"2. The City agrees to keep Society generally informed of its progress in the construction of the new animal shelter and will provide Society with written confirmation of the start and finish dates for construction tasks:

- a. Site Selection
- b. Site Acquisition
- c. Underground
- d. Footing/Foundation/Site Work
- e. Framing
- f. Roofing
- g. Windows/Doors
- h. Electrical
- i. Plumbing
- j. Mechanical

- k. Walls/Ceilings
- l. Interior Finishing
- m. Exterior Finishing
- n. Completion of Construction
- o. Opening Date”

5. Section V(f) of the Agreement is deleted in its entirety and replaced as follows:

“f. Ninety (90) days’ written notice without cause by either party hereto;”

6. Section XXI shall be amended to include section 6, immediately following XXI(5) as follows:

“6. In the spirit of collaboration and when appropriate, joint public announcements will include talking points that are jointly agreed upon between the City and Society before the announcements are made.”

7. Except as otherwise provided herein, the Agreement entered into by City and Society, effective March 1, 2014, remains in full force and effect.

8. In the event of any conflict between the body of this Fourth Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Fourth Amendment shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties provided for within the body of this Fourth Amendment shall be null and void.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
A California municipal corporation

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

By: \_\_\_\_\_  
Wilma Quan  
City Manager

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

Name: \_\_\_\_\_

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: \_\_\_\_\_  
(If corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By: \_\_\_\_\_  
Tracy N. Parvanian          Date  
Senior Deputy City Attorney

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

Name: \_\_\_\_\_

ATTEST:  
YVONNE SPENCE, MMC CRM  
City Clerk

Title: \_\_\_\_\_  
(If corporation or LLC, CFO,  
Treasurer, Secretary, or Assistant  
Secretary)

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

## EXHIBIT B – FEE SCHEDULE

1. As compensation for the Augmented Services, the Society shall be paid the following sums, as approved and appropriated by the City Council.

During the 2020-2021 fiscal year, a current year fee not to exceed \$5,345,000, as set forth below, which shall be payable in equal quarterly installments on or before each July 15, October 15, January 15, and April 15.

Payroll:	\$3,868,000*
Supplies/Service Fees:	\$1,431,000**
Estimated Cost of Care Fee:	\$46,000***

\*Payroll fees include a wage increase of an additional \$3 per hour for Animal Control Officers on July 1, 2020, to better align Society with other Central Valley animal control operations. The minimum starting wage for Animal Control Officers will be \$16 per hour. The payroll fees also include the mandated minimum wage increase to \$14 per hour which will affect all shelter/animal control employees.

\*\*Supplies/service fees include a 2% annual cost of services/supplies increase over 2019/2020 estimated expenditures. The last increase for service and supply fees occurred in FY 2014-2015. The fee also includes a \$41,000 increase in animal disposal fees as the current service provider was acquired by another company.

\*\*\*The estimated number of animals in care on July 1, 2020, is 200 cats and 400 dogs for a total of 600 animals with a boarding fee of \$15 per day, per animal. The daily animal count is based upon the shelter's average 10 day Length of Stay (LOS) for dogs and 7 day LOS for cats. All existing animals are estimated to be outcome within two weeks.

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