

Order 147-08/09

Given first reading on 1/21/09

Amended & Passed 2/2/09 9-0

JILL C. DUSON (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER APPROVING CONTRACT WITH THE
ANIMAL REFUGE LEAGUE OF WESTBROOK**

ORDERED, that the City Manager is hereby authorized to execute a contract on behalf of the City with the Animal Refuge League of Westbrook in substantially the same form as Attachment 1 hereto.

AGREEMENT

THIS AGREEMENT made and executed in duplicate this ___ (day) of (month), 2009, by and between the City of Portland, a municipal corporation with a place of business located at 109 Middle Street in the City of Portland, County of Cumberland, State of Maine (hereinafter "Municipality") and the Animal Refuge League, a non-profit corporation organized and existing under the laws of the State of Maine, with a principal place of business located at 449 Stroudwater Street, in Westbrook, County of Cumberland, State of Maine, (hereinafter "ARL").

WITNESSETH:

WHEREAS, Municipality is required under the laws of the State of Maine to provide shelter at a State licensed animal control shelter (7 M.R.S.A. 3949) for stray and lost dogs, cats, and domesticated animals that are a problem in the community (hereinafter "Animals"); and

WHEREAS, Municipality is required under the laws of the State of Maine to provide services relating to the humane disposition of said Animals in the event they are not claimed by their owners; and

WHEREAS, ARL possesses both the expertise and facilities to provide these services;

NOW, THEREFORE, the parties hereby agree as follows:

1. *Acceptance of Animals.* Provided the ARL shelter is not under quarantine as imposed by State humane agent(s), State veterinarian(s), or contract veterinarian(s), ARL agrees that it will accept each and every stray, lost and confiscated domestic Animal delivered to it at the ARL shelter by a duly authorized Animal Control Officer, Police Officer or citizen of Municipality, provided the Animal was found within the territorial limits of Municipality. Said Animals shall be held for the legal impoundment period, after which the ARL will make such disposition as it, in its sole discretion, deems necessary and proper.
2. *Delivery of Animals.* Provided the ARL shelter is not under quarantine, all stray or lost Animals collected by the said Animal Control/Police Officer shall be delivered to ARL for the impoundment period provided the Animal Control/Police Officer cannot return the stray or lost Animal to its owner directly.
3. *Delivery and Hours of Operation.* ARL staff are regularly available between 7:00 a.m. and 5:00 p.m. Monday through Friday and between 7:00 a.m. and 4:00 p.m. Saturdays and Sundays. Whenever possible, delivery of said animals should be planned during those hours in order to ensure there is cage/kennel space available. After regular business hours, Animal Control/Police Officer(s) have access to limited temporary kenneling facilities at the ARL shelter.
4. *Exclusive Rights and Custody.* Municipality agrees that all Animals apprehended and seized within the boundaries of the Municipality and delivered to the ARL

shall be under the exclusive control and custody of the ARL. Moreover, Municipality agrees that, so far as it is concerned, the ARL shall have the undisputed right, consistent with the laws of the State of Maine, to humanely dispose of every Animal given into its custody in accordance with State laws and the policies and procedures of the ARL.

5. *Proper Care Required.* ARL shall comply with animal care standards as required by State law for such Animals while they are in the ARL's possession.
6. *Rabies Quarantine.* The ARL shall quarantine on a space available basis for a period of at least ten (10) days, stray dogs and cats in the Municipality which have bitten residents of the Municipality. Provision for rabies testing, and the costs therein, are the sole responsibility of the Municipality and/or its residents. The ARL is not obligated, nor does it have the space, to quarantine privately owned Animals.
7. *Fees.* For the services provided by the ARL, Municipality agrees to pay the ARL the total sum of \$75,501.60, which is based on 2 Quarters at your current rate of \$1.20 per capita of Municipality population, 63,011, from the July, 2006 estimated census, and 2 Quarters at the rate of \$1.20 per capita of Municipality population, 62,825, based on the July, 2007 estimated census. All money is payable in advance. Quarterly payments are in the amount of \$18,903.30 each for Quarter 1 & 2 and \$18,847.50 each for Quarter 3 & 4. The first installment is due and payable on the date of commencement of this Agreement. It is mutually agreed that the fees provided herein may be renegotiated within ten (10) days written notice of either party, said renegotiated fees not to become effective until the annual renewal date, provided said fees are renegotiated not less than thirty (30) days prior to any renewal date.
8. *Boarding of Confiscated Anima/s.* The fees noted in Paragraph 7, above, shall cover all boarding for Animals delivered to the ARL and held other than those pending court proceedings. It is important to note that in the case of seizures due to cruelty and or neglect, costs and fees for animal care are the municipality's responsibility. The law does provide for the municipality's reimbursement from the animal's owner.
9. *Impoundment Fee Collection and Licensing.* The ARL agrees that it will require every owner seeking to redeem an impounded Animal to pay the appropriate municipal impoundment fee, plus the cost of board at a rate to be determined by the ARL for each day of impoundment from the date of impoundment. Further, the ARL will require the owner of every impounded Animal to pay all applicable fees, including veterinary medical and vaccination fees, of an impounded Animal. The ARL shall also require proof of licensure prior to releasing a dog into the custody of the owner in accordance with 7 M.R.S.A. 3913(3) (C), as may be amended or will provide owner with a ten (10) day temporary license and forward copies to Municipality.

10. *Documentation.* The ARL agrees to provide to Municipality an annual detailed record of the number of stray or lost Animals seized within the territorial limits of Municipality and received by the ARL.
11. *Enforcement Activities.* Municipality shall be fully responsible for carrying out all enforcement activities required under the laws of the State of Maine and the Ordinances of the Municipality, as may be amended. The ARL shall not be required to apprehend or seize any Animals found roaming at large.
12. *Donations and Gifts.* Any and all donations, contributions, or anything of value given to or received by the ARL as a result of any service performed in carrying out the provisions of the Agreement, including but not limited to payments received pursuant to Paragraph 7 above, shall be the exclusive property of the ARL, and Municipality shall have no claim or interest therein.
13. *Adoption Authority.* The ARL shall have the sole and exclusive right to determine the responsibility of persons offering to become the owners of unclaimed Animals and the suitability of homes offered, and shall have the sole and exclusive right to accept or reject such applicants for unclaimed Animals.
14. *Veterinary Care.* Municipality agrees that it shall obtain appropriate emergency veterinary care for injured Animals prior to delivery to the ARL shelter. In the event that Municipality delivers an injured Animal to the ARL without first obtaining appropriate emergency veterinary care, the ARL, in its sole discretion, may elect either to refuse acceptance of such Animal or to accept delivery of such Animal and procure the veterinary care it deems necessary or appropriate. Municipality agrees to reimburse the ARL for the costs of such care within ten (10) days from the receipt of an invoice therefore.
15. *Animal Control Officers.* Municipality agrees that it shall notify the ARL, in writing, of the identities of all of its duly authorized Animal Control Officers. Municipality agrees that it will provide each Animal Control Officer with a copy of the animal control laws of the State of Maine contained in the booklet published by the Maine Animal Welfare Board, the sections of the Municipality's Codes or Ordinances which are pertinent to the performance of their duties, and the terms of this Agreement. Animal Control Officers must also be certified as required by Title 7 M.R.S.A. 3947.
16. *Independent Capacity.* The ARL, its officers, employees, agents and volunteers shall act in an independent capacity during the term of this Agreement and shall not act or hold themselves out as officers, employees, agents or volunteers of Municipality. Municipality, its employees, agents and representatives shall act in an independent capacity during the term of this Agreement and shall not act or hold themselves out as officers, employees, agents or volunteers of the ARL. Nothing in this Agreement shall be deemed by either party or by any third party as creating a joint venture or partnership between the ARL and Municipality.

17. *Indemnity.* The ARL shall, at its own expense, defend, indemnify and save Municipality harmless from and as to all demands, claims, causes of action or judgments as the extent that some loss or claim results from the error, omission, negligence or fault of the ARL, its officers, employees or agents.
18. *Compliance.* The ARL agrees to comply with applicable federal and state laws and regulations in the performance of this Agreement.
19. *Assignment.* This Agreement shall not be assigned by either party without the prior written approval of the other party.
20. *Other Services.* The ARL offers to provide the following services to Municipality at no additional cost to Municipality:
 - a. *Cremation Services:* The ARL will accept for cremation stray or lost Animals, dead on arrival, from animal control officers, or duly authorized law enforcement personnel.
 - b. *Telephone Services:* To avoid confusion, the ARL will take all telephone inquiries regarding reclaiming an Animal and adopting an Animal. Under special circumstances involving suspected abuse or neglect, the Animal Control/Police Officer(s) may request that they be contacted prior to an Animal being reclaimed by its owner.
 - c. *Lost and Found Pet Services:* ARL staff will take lost and found reports to facilitate the return of pets to their owners.
 - d. *Education Services:* ARL staff and volunteers will be available for conducting education programs upon request to any interested community group or organization, including schools, grades K through 12.
21. *Term.* The term of this Agreement shall be from January 1, 2009, to December 31, 2009.
22. *End of Term.* At or before the end of the term of this Agreement, the parties shall negotiate the terms and conditions of either an extension of this Agreement or a new Agreement. As long as Municipality is negotiating in good faith, the ARL agrees to continue to receive and care for stray and lost Animals pursuant to the terms and conditions of this Agreement as may be in effect at the end of the term. Provided, however, that such obligation shall not exceed three (3) months and that Municipality continues to make quarterly payments as were in effect at the end of the term.
23. *Complete Agreement.* This Agreement represents the entire agreement between the parties and no oral or prior written matter shall have any force or effect. No amendment shall be effective without prior express written approval signed by both parties hereto. Neither party shall be bound by any conditions not expressly stated in this Agreement.

24. *Binding.* This Agreement is binding upon, and shall inure to the benefit of the heirs, assigns and successors in interest of the parties hereto.
25. *Severability.* If any provisions of this Agreement shall be adjudged to be invalid or unenforceable by final judgment of a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity of the Agreement and the remaining provisions of the Agreement shall be construed as if not containing such provision and, thereafter, the rights and obligation of the parties shall be construed and enforced under the remaining provisions of the Agreement.
26. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maine.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf, in duplicate counterparts, as of the date first above written.

CITY OF PORTLAND

By: _____
Printed name: Joseph E. Gray, Jr.
Its:

Witness: _____
Printed Name: _____

ANIMAL REFUGE LEAGUE

By: _____
Printed Name: _____
Its: _____

Witness: _____
Printed Name: _____