

**CITY OF FERNDALE
REQUEST FOR COUNCIL ACTION**

FROM: Michael P. Kitchen, Chief of Police

SUBJECT: 2010 Animal Sheltering Agreement between Michigan Humane Society and City of Ferndale

SUMMARY & BACKGROUND: Council's approval of the Michigan Humane Society 2010 Animal Sheltering Agreement with City of Ferndale

ATTACHMENTS: Michigan Humane Society 2010 Contract with City of Ferndale

COUNCIL AGENDA DATE: November 9, 2009

CITY ATTORNEY REVIEW: Approved

FINANCE DIRECTOR REVIEW: n/a

RECOMMENDED ACTION:

Moved by , seconded by , that Council approve the proposed Michigan Humane Society 2010 Animal Sheltering Agreement with the City of Ferndale; Mayor and City Clerk to execute contract.



Attorneys at Law

4190 Telegraph Road, Suite 3000
Bloomfield Hills, Michigan 48302-2082

Main (248) 731-3080
Fax (248) 731-3081

P. Daniel Christ
Direct (248) 731-3085
dchrist@hshclaw.com

November 2, 2009

Captain Timothy D. Collins
Ferndale Police Department
310 E. Nine Mile Road
Ferndale, Michigan 48220

Via E-Mail

*Re: 2010 Animal Sheltering Agreement between Michigan Humane Society
and City of Ferndale*

Dear Captain:

Please be advised that I have reviewed the proposed Animal Sheltering Agreement submitted by the Michigan Humane Society for 2010. The proposed Agreement is approved as to form and should be forwarded to Council for its consideration.

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

P. Daniel Christ

PDC/bbo

cc: Diane K. Emmi (via e-mail)



October 7, 2009

Officer Tom Waller, ACO
City of Ferndale
310 East Nine Mile Road
Ferndale, MI 48212

*Berman Center for
Animal Care in Westland*
900 N. Newburgh
Westland, MI 48185
734.721.7300

Re: Animal sheltering agreement

Dear Officer Waller:

*Detroit Center for
Animal Care*
7401 Chrysler Dr.
Detroit, MI 48211
313.872.3400

Enclosed please find the contract for animal sheltering services from January 1, 2010 to December 31, 2010.

Due to the economic challenges we are all facing at this time, we have been very sensitive with regards to increasing our fees, even though our costs continue to go up. Your new contract reflects the following:

*Rochester Hills
Center for Animal Care*
3600 W. Auburn Rd.
Rochester Hills, MI 48309
248.852.7420

- 1) Section 4.03 Fees, Paragraph A, Line Item #1: Domestic animals - \$35.00 per day or part thereof (this represents approximately a 4% increase in disposal fees).
- 2) Section 4.03 Fees, Paragraph B: A specimen preparation and handling fee of Two Hundred Dollars (\$200.00) per animal required to be tested for rabies, plus any fees charged by the testing agency. Should services of an MHS veterinarian be used in the specimen preparation process, MHS at its sole discretion may charge an additional \$100 (this more closely reflects our costs associated with process and risk management).

Administration
30300 Telegraph Rd.
Suite 220
Bingham Farms, MI 48025
248.283.1000

We appreciate our working relationship and will do our best to contain costs, especially during these difficult times, as well as continue to render the best service to the animals, your employees and your constituents.

Please review the contract, obtain the appropriate signatures, and mail both copies to my attention. Upon receipt I will sign and return a fully executed copy to you.

Best Regards,

1-866-MHUMANE
www.michiganhumane.org

David A. Williams
Chief Operating Officer
Michigan Humane Society

ANIMAL SHELTERING AGREEMENT

This AGREEMENT ("Agreement") made January 1, 2010, by and between the CITY OF FERNDALE whose principal address is 300 East Nine Mile Road, Ferndale, MI 48220 ("Ferndale") and THE MICHIGAN HUMANE SOCIETY whose principal address is 30300 Telegraph Road, Suite 220, Bingham Farms, MI 48025-4507 (the "MHS").

WHEREAS, it appears to be of mutual advantage to Ferndale and the MHS to contract for the MHS to assume certain responsibilities to assist in the enforcement of the animal laws and regulations of the State of Michigan and the ordinances of Ferndale; and

WHEREAS, the parties desire to set forth the terms of their agreement in a written document.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the parties agree as follows:

SECTION I Definitions

The words and phrases used in this Agreement shall have the following meanings:

1.01 "**Animal Shelter**" means a facility owned and operated by the MHS to care for impounded and other animals.

1.02 "**Animal(s)**" includes all dogs, cats, wildlife, rodents, reptiles, and all other animals commonly kept as domestic pets and livestock.

1.03 "**Euthanasia**" means the humane destruction of animals.

1.04 "**Owned Animals**" means any pet released directly to the MHS by the owner(s) or by any person having been entrusted by the owner(s) with the care, control, custody and right to make disposition thereof.

1.05 "**Owner**" means that person or those persons having all rights of ownership of the subject animal including the right to transfer ownership, but does not include employees or agents of Ferndale or other governmental agencies when acting pursuant to Ferndale ordinance, Michigan statute, or order of a court of competent jurisdiction.

1.06 "**Rabies**" is a specific infectious disease of certain animals, which may be communicated to man by direct inoculation, as by a bite of an infected animal.

1.07 "**Required Holding Period**" means the time period required for holding stray animals or an animal suspected to be infected with rabies or an animal held for observation or isolated as provided by Michigan statute or Ferndale ordinance or directive or any amendment to either, whichever is greater.

SECTION II

Duties of The MHS

The MHS shall, during the term of this Agreement and any extensions thereof, perform the following duties:

2.01. **Animal Shelter**. Maintain an Animal Shelter adequate to provide the services required by this Agreement.

2.02. **Receiving Animals**. To accept animals delivered to the MHS by Ferndale through its duly authorized representatives and employees after said animals have been held for the statutorily required holding period at Ferndale's facilities, and either place said animals for adoption or to humanely euthanize same.

2.03. **Disposition of Animals**. Upon delivery of the animals to the MHS they become the sole wards and property of the MHS and their disposition is at the ultimate and exclusive determination of the MHS.

2.04 **Adequate Shelter for Animals**. Provide adequate food, water, shelter and humane care for all animals impounded by Ferndale and delivered to the MHS until placed or otherwise humanely disposed of in accordance with the applicable laws and ordinances consistent with the provisions of this Agreement.

2.05 **Adequate Shelter--Isolated Animals**. Provide adequate food, water, shelter and humane care for any animal which is suspected of being infected with rabies, or which is held for observation or isolated at the instruction of Ferndale, for such period of time as may be required by applicable law.

2.06 **Cooperate with Authorities--Animal Bittings**. Upon the request of authorized officers, agents and employees of Ferndale, cooperate with respect to investigations of persons bitten by animals within the jurisdictional limits of Ferndale.

2.07. **Regular Business Hours**. Maintain regular business hours at the Animal Shelter for the purpose of transacting business in connection with its duties to be performed under this Agreement and for the purpose of receiving animals.

2.08 **Cooperate with Authorities--Animal Cruelty**. Upon the request of Ferndale, its residents, others or on MHS' own initiative consistent with the provisions of the laws and regulations of the State of Michigan, cooperate in the investigation of reports of cruelty to animals or violations or laws and regulations relating to animal welfare.

2.09 **Records**. Keep accurate financial records and account to Ferndale monthly for all fees collected on behalf of Ferndale. The MHS will permit Ferndale, upon reasonable advance notice and during normal business hours, to inspect and audit MHS records maintained pursuant to this Agreement.

2.10. **Indemnification**. Indemnify and hold harmless Ferndale from any and all demands, claims, judgments or causes of action, and from all expenses that may be incurred in investigating or defending against same, arising from or growing out of any act, neglect or omission of the MHS, its agents or employees, in the performance of this Agreement.

2.11 **Insurance**. The MHS shall, at its own expense, carry insurance in an amount not less than Two Hundred and Fifty Thousand Dollars (\$250,000) for the benefit of and to protect itself and Ferndale against all such demands, claims, judgments or cause of action; and carry at its own expense, fidelity insurance coverage in an amount not less than Fifty Thousand Dollars (\$50,000) covering all of its agents or employees, who in the exercise of their duties, collect or have custody of money belonging to Ferndale.

SECTION III **Duties of Ferndale**

Ferndale shall, during the term of this Agreement and any extensions thereof, perform the following duties:

3.01. **Certificate**. Supply the MHS with accurate records containing information concerning the animals delivered.

3.02. **Text of Relevant Laws**. Furnish the MHS with an adequate supply of the text of all applicable laws and regulations dealing with dogs and other animals and promptly furnish the MHS with adequate copies of all new acts, amendments, regulations or other applicable legislation.

3.03 **Humane Treatment**. Ensure that all agents of employees of Ferndale or others acting at the direction of Ferndale charged with the duties of picking up, holding, transporting and unloading animals do so in a humane manner.

3.04. **Indemnification and Insurance**. Indemnify, defend and hold harmless the MHS from any and all demands, claims, judgments or causes of action arising from or growing out of any act, neglect or omission of Ferndale, its agents or employees in the performance of this Agreement. Ferndale shall be self-insured in accordance with its membership in the Municipal Risk Authority and shall provide the MHS with evidence of such membership upon written request by the MHS.

SECTION IV **Miscellaneous**

4.01 **Term**. The Term of this Agreement shall be one (1) year, said period commencing on January 1, 2010 expiring on December 31, 2010 (the "Term").

4.02 **Termination for Cause**. Failure by either party to this Agreement to perform the duties required of it by this Agreement shall be deemed sufficient cause for termination by the other party. In the event of termination, any funds advanced to the MHS shall be reimbursed in services only.

4.03 **Fees**. Ferndale shall pay the following fees to the MHS for services under this agreement:

A. A fee for handling shall be paid per day or each part thereof for each animal delivered to the MHS by Ferndale, including those that are received as dead upon arrival. Such fees shall be payable monthly by Ferndale upon receipt of an invoice from the MHS covering the previous calendar month's operations. Terms of payment are net 30 days with a one and one-half percent (1 1/2%) per month service charge on all past-due balances.

Handling fess shall be assessed as follows:

1. Domestic animals - \$35.00 per day or part thereof.
2. Wildlife - \$65.00 per day or part thereof.
3. Wildlife sick or injured* - \$33.50 per day or part thereof.

*MHS managers and/or evaluators shall make the determination if wildlife is sick or injured.

B. A specimen preparation and handling fee of Two Hundred Dollars and No Cents (\$200.00) for each animal required to be tested for rabies, plus any shipping fees or fees charged by the testing agency. Should services of an MHS veterinarian be used in the specimen preparation process, MHS at its sole discretion may charge an additional \$100.

4.04 **Animals for Which No Fee Shall Be Paid.** No fees shall be assessed against Ferndale for owned animals given directly to the MHS by their owners unless such animal has bitten a human and is subject to observation or testing. Additionally, no fee shall be assessed against Ferndale for wildlife from within the jurisdictional limits of Ferndale impounded by action of a commercial pest control company operating independently of Ferndale unless such wildlife has bitten a human and is subject to testing for rabies.

4.05. **Independent Contractor.** For all purposes herein, the relationship of the MHS and Ferndale shall be that of independent contracting parties and nothing contained herein shall create or be deemed to create an employer/employee relationship, a joint venture, or any other agency relationship whatsoever.

4.06. **Non-Discrimination.** The parties hereto shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to his/her hire, compensation, tenure, terms, conditions, or privileges of employment or service because of his/her sex, race, color, religion, age, national origin or ancestry and further, the parties hereto shall require similar covenants on the part of any subcontractor or agent employed in the performance of this Agreement.

4.07 **No Animal Research.** Neither party to this agreement shall release any animal for medical research.

4.08 **Non-Exclusivity.** The MHS shall be free to enter into contractual arrangements with other communities without obtaining approval from Ferndale so long as such arrangements do not impair performance of this Agreement. The city of Ferndale shall be free to enter into contractual arrangements with other entities regarding the disposition of animals according to the laws and regulations of the State of Michigan without obtaining approval of the Michigan Humane Society.

4.09 **Property Rights.** Upon expiration of any required holding period, stray animals shall become the sole property of the MHS and may be disposed of according to law.

4.10 **Retention of Vaccination/Veterinary Fees.** The MHS shall retain all fees collected for vaccinations and veterinary services performed by the MHS.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized agents as of the date first set forth above.

In the Presence of:

CITY OF FERNDALE

By: _____

Its: _____

THE MICHIGAN HUMANE SOCIETY

By: _____

David Williams
Chief Operating Officer
