SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: A-9

DATE: November 15, 2007

SUBJECT: Interlocal Agreement with the City of Everett for Animal Shelter Services

CONTACT PERSON: Deborah Knight, City Administrator D. Knight

ISSUE:

The issue before the City Council is to direct staff to terminate the Interlocal Agency agreement (Attachment A) with the City of Everett for animal shelter services.

STAFF RECOMMENDATION:

City staff recommend terminating the Interlocal Agency Agreement with the City of Everett for animal shelter services until such time as the City can either 1) negotiate a new contract with Everett that excludes Sultan residents from directly delivering animals to the Everett Animal Shelter or 2) the City is able to directly invoice Sultan residents for the cost of dropping off stray animals at the animal shelter.

SUMMARY:

On January 25, 2007, the City Council authorized the Mayor to sign the Interlocal Agreement with Everett Animal Shelter. A contract for sheltering services is one component of the City's animal control program.

Staff orginally estimated the City would spend approximately $1,455 (15 animals x $97) on sheltering services in 2007. This estimate assumed that **only** City staff would request sheltering services.

The City has spent $3,776 on sheltering services since the Interlocal went into effect. 32 stray animals have been delivered to the Everett's Animal Shelter by Sultan residents. The majority of the stray animals delivered to the Shelter from Sultan are cats and they have been delivered by one or two Sultan residents.

The City has used the animal shelter twice since the beginnnig of the Interlocal. The City was only charged for one animal since the owner of one cat retrieved their pet. Stray animals impounded by the City have either been released back to their owners or they have been adopted by new owners.

The Everett Animal Shelter has indicated that the City could continue to bring animals to the Shelter. Without the Interlocal Agreement in place, the Shelter will charge the City $137 per animal rather than the $97 per animal rate provided for in the Interlocal.

Given the City's current minimal need for the Everett Shelter and the costs incurred by Sultan as the result of residents using the Shelter, staff is recommending the City give the City of Everett notification of its intent to terminate the contract.

The City Council can direct staff to try and negotiate a contract with Everett that excludes Sultan residents from directly using Shelter services.

If Everett is unwilling or unable to renogotiate the Interlocal with Sultan, the other option, if the City still wants to have an Interlocal with Everett for shelter services, is to implement the necessary ordinance(s) to directly invoice Sultan residents for the cost of dropping off stray animals at the animal shelter.

BACKGROUND:

Under the Interlocal Agency agreement, the City is obligated to pay a $97.00 administrative fee per animal impounded for 2007.

In accordance with Section I – Scope of Services:

A. Everett shall provide the services described herein for stray animals delivered to Everett's Animal Shelter by an officer designee, ***or resident*** *of Sultan* [emphasis added].

The proposed Interlocal Agency agreement provides the following animal shelter services:

1. Sheltering and holding animals at facilities operated by Everett, provided that capacity is available at the time of delivery.
2. Releasing animals to owners.
3. Disposing of animals, including adoption or destruction of animals not claimed by an owner, in accordance with Sultan's Municipal Code and the terms of the Agreement.
4. Disposing of dead animals.

The term of the agreement is from January 1, 2007 through December 31, 2010. Section IV – Termination of the agreement provides that either party can terminate the agreeement with sixty (60) days written notice.

FISCAL IMPACT:
The cost of Interlocal Agreement for shelter services is approximately 2.5 times the estimate provided to the City Council in January.

The proposed Interlocal allows Everett to adjust its fees annually effective January 1, of each calendar year. The City is not aware of Everett's intent to adjust the fees for 2008.

Section III - Financial provides the following:

> A. Sultan agrees to pay Everett, within thirty (30) days of receipt of an invoice or statement from Everett, all fees incurred pursuant to this Agreement including an administrative fee in the sum Ninety-Seven Dollars ($97) per animal impounded for maintenance and operation costs.
>
> B. Everett may adjust the fee charged per animal on an annual basis to be effective on January 1 of each calendar year. If Everett intends to adjust said fee, it will give Sultan at least ninety (90) days written notice of its intent to do so.

ANALYSIS:

The City of Sultan impounds at-large, stray and nuisance domestic animals in accordanc with Chapter 6 of the Sultan Municipal Code (SMC). Section 6.04.110 outlines the City's procedure for impounding dogs:

6.04.110 Impounding dogs – When authorized.

Whenever any dog is found performing any of the activities described in this chapter, or has bitten any person or animal, a code enforcement officer, police officer, any owner or any private person may impound it by immediately delivering such dog to the place designated for such impoundment.

The proposed Interlocal Agency agreement provides a mechanism for long-term sheltering of dogs and cats.

The City has incurred unanticipated expenses in 2007 as a result of Sultan residents directly delivering animals to the Everett Shelter. If the Interlocal is terminated, it appears that the City can continue to deliver animals to the Shelter at the $137 rate rather than the $97 rate. However, Sultan residents would be unable to directly deliver animals to the Shelter.

ALTERNATIVES:

1. Direct staff to discontinue the Interlocal Agency Agreement (Attachment A) with the City of Everett for animal shelter services.

   Under this alternative, Sultan **<u>would not</u>** be invoiced for animals delivered to the Shelter by Sultan residents. However, the City would be charged the increase $137 rate for delivering animals to the Shelter.

The City of Sultan has a small animial shelter located at the City's Public Works shop. The City could use this facility and in-house staff to contain, manage, and dispose of animals as required under Chapter 6 of the Sultan Municipal Code.

The City has been very successful this year in finding homes for 30 roaming dogs, half of these animals were return to their owners immediately, the other half were impounded and later released to their owners or an adopted family.

Staff anticipates that this approach can be successfully used next year saving the City the cost of shelter animals at the Everett facility.

Under this alternative, Staff recommend the Council approve an in-house animal control officer to care for animals housed at Sultan's shelter as recommended in the 2008 Preliminary Budget.

2. Direct staff to discontinue the Interlocal Agency Agreement with the City of Everett for animal shelter service while the City seeks to either:
   a. Negotiate a new contract with Everett that excludes Sultan residents from directly delivering animals to the Everett Animal Shelter; or
   b. Work on a process to directly invoice Sultan residents for the cost of dropping off stray animals at the Everett Animal Shelter.

   This alternative implies that the City is interested in continueing to use the Everett Shelter at the lower $97 rate if there is a mechanism for the City to either control the costs by excluding Sultan residents or covering the costs incurred by invoicing residents for the use of the Shelter.
3. Do not direct staff to terminate the Interlocal Agency agreement with the City of Everett for animal shelter services and direct staff to areas of concern.

RECOMMENDED ACTION:
Direct staff to terminate the Interlocal Agency Agreement with the City of Everett for animal shelter services until such time as the City can either 1) negotiate a new contract with Everett that excludes Sultan residents from directly delivering animals to the Everett Animal Shelter or 2) the City is able to directly invoice Sultan residents for the cost of dropping off stray animals at the animal shelter.

RECOMMENDED MOTION:
I MOVE TO DIRECT STAFF TO TERMINATE THE INTERLOCAL AGENCY AGREEMENT WITH THE CITY OF EVERETT FOR ANIMAL SHELTER SERVICES UNTIL SUCH TIME AS THE CITY CAN EITHER 1) NEGOTIATE A NEW CONTRACT WITH EVERETT THAT EXCLUDES SULTAN RESIDENTS FROM DIRECTLY DELIVERING ANIMALS TO THE EVERETT ANIMAL SHELTER OR 2) THE CITY IS ABLE TO DIRECTLY INVOICE SULTAN RESIDENTS FOR THE COST OF DROPPING OFF STRAY ANIMALS AT THE ANIMAL SHELTER.

ATTACHMENT:

Attachment A – Agreement regarding animal shelter use betweem the cities of Everett and Sultan

COUNCIL ACTION:

DATE:

AGREEMENT REGARDING ANIMAL SHELTER USE BETWEEN THE CITIES OF EVERETT AND SULTAN

This Agreement is made by and between the City of Everett, a municipal corporation of the State of Washington (hereinafter "Everett"), and the City of Sultan, a municipal corporation of the State of Washington (hereinafter "Sultan").

WHEREAS, Sultan regulates animals pursuant to its municipal code; and

WHEREAS, Sultan does not have facilities to shelter, care for, and dispose of animals as specified in its municipal code; and

WHEREAS, RCW 39.34.010 and 39.34.080 authorize the parties to contract for the performance of government services such as animal shelter services; and

WHEREAS, Everett is agreeable to rendering such services on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

I. SCOPE OF SERVICES

A. Everett shall provide the services described herein for stray animals delivered to Everett's Animal Shelter by any officer, designee, or resident of Sultan. In consideration of Everett providing such services, Sultan agrees to comply with the provisions of this Agreement.

B. For purposes of this Agreement, the term "animals" shall refer to any member of the classes reptile, bird, or mammal, except man.

C. Animal shelter services shall include:

1. Sheltering and holding animals at facilities operated by Everett, provided that capacity is available at the time of delivery.

2. Releasing animals to owners.

3. Disposing of animals, including adoption or destruction of animals not claimed by an owner, in accordance with Sultan's Municipal Code and the terms of this Agreement.

4. Disposing of dead animals.

D. Everett reserves the right to refuse acceptance of any animal, where, in the opinion of the shelter staff, it does not have facilities, capacity or expertise appropriate or available to accommodate the needs of such animals. Prior to dropping off an animal to the Everett Animal Shelter, any apparent veterinary care shall have been provided by Sultan. In the event an animal is deposited at the Everett Animal Shelter and it is determined that veterinary care should have been provided, Sultan

agrees to pay and will be billed for the cost of veterinary care incurred by Everett, plus an additional fee of $200 will be imposed for each incident.

E. Everett agrees to provide animal shelter services for animals delivered for the following periods:

1. Seventy-two (72) hours from the hour of delivery if the animal is not licensed and has no known owner

2. Ten (10) days from the date of delivery if the animal is licensed or has a known owner. An additional Ten Dollars ($10.00) per day per animal charge will be assessed for animals held at Sultan's request longer than the above time periods.

F. The shelter staff will, during the period provided in paragraph I(E), deliver the animal to any person who claims to be and has evidence of the ownership of said animal.

G. An animal may not be released until all administrative, impound, and board fees, as established jointly by Sultan and Everett, have been paid by the person seeking release of the animal. Said fees, pursuant to the terms of this Agreement, shall become the property of Everett.

H. Animals that have bitten people will be quarantined for a period of ten (10) days and then destroyed or returned to their owner at the discretion of Sultan. Quarantined animals shall not be released until all quarantine fees related to the animal are paid. Sultan and Everett shall jointly establish quarantine fees.

I. Sultan agrees to furnish Everett copies of all provisions of its Municipal Code/regulations affecting Everett's performance under this Agreement and shall notify Everett at least 30 days prior to the effective date of any amendment or revision.

J. Everett will pay all costs incurred in providing animal shelter services under this Agreement except as otherwise provided by this Agreement.

K. Everett shall have the authority to sell or dispose of animals after the period provided in paragraph I(E) if not claimed as provided in paragraph I(F). The proceeds of such sale shall belong to Everett. Any such sale or disposition by Everett shall be in accordance with all applicable state statutes and administrative codes.

L. Everett shall not sell or donate any animal delivered by Sultan or any of their duly authorized representatives for the purpose of scientific research or testing.

II. TERM

This Agreement shall be deemed effective as of January 1, 2007 and shall continue in full force and effect through December 31, 2010.

III. FINANCIAL

A. Sultan agrees to pay Everett within thirty (30) days of receipt of an invoice or statement from Everett, all fees incurred pursuant to this Agreement including an administrative fee in the sum Ninety-Seven Dollars ($97) per animal impounded for maintenance and operation costs.

B. Everett may adjust the fee charged per animal on an annual basis to be effective on January 1 of each calendar year. If Everett intends to adjust said fees, it will give Sultan at least ninety (90) days written notice of its intent to do so.

C. Everett must maintain adequate records to support billings for a period of five (5) years after completion of this contract by Everett. Sultan or any of its duly authorized representatives shall have access to any books, documents, or papers and records of Everett which are directly related to this contract for the purposes of audit examinations.

IV. TERMINATION

Either party may terminate this Agreement by sixty days' written notice to the other party.

V. INDEMNIFICATION

A. Each party agrees to defend and indemnify the other party from any and all Claims arising out of, in connection with, or incident to its conduct relating to this Agreement. A party shall not indemnify the other party for the other party's sole negligence. If a claim is caused by or results from the conduct of both parties, each party shall be responsible to the extent of its fault.

B. As used in this paragraph, "Claims" include, but are not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. "Party" includes employees, officials, representatives, and elected officials.

VI. MISCELLANEOUS

A. Notice Addresses. Any statement, notice, request or other communication hereunder shall be deemed to be sufficiently given to the addressee and any delivery hereunder deemed made when sent by certified mail addressed to the following addresses:

Notices to the City of Everett shall be sent to the following address:

City of Everett
Attn: City Clerk
2930 Wetmore Ave.
Everett, WA 98201

Notices to Sultan shall be sent to the following address:

City of Sultan
Attn.: Mayor
319 Main Street, Suite 200
Sultan, Washington 98294

B. Construction. Each party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Each party acknowledges that the Agreement should not be strictly construed against one party or the other, but interpreted reasonably and fairly so as to give effect to the manifest intentions of the parties.

C. Modification. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

D. Severability. In the event that any provision of this Agreement is held invalid, void, illegal or unenforceable, the remainder of this Agreement shall not be impaired or affected thereby, and each term, provision, and part shall continue in full force and effect and shall be interpreted in manner consistent with the intent of the parties.

E. Headings for Convenience. The section and subsection headings used herein are for convenience only, and shall not be used to interpret the Agreement.

F. Assignment Barred. Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party.

G. Complete Agreement. This Agreement contains the complete and integrated understanding and Agreement between the parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

H. Governing Law and Venue. The laws of the State of Washington shall govern this Agreement. Any lawsuit regarding this Agreement must be brought in the Superior Court of Snohomish County, Washington.

I. Relationship of Parties. Everett and Sultan shall not be construed as joint ventures or general partners, and neither shall have the power to bind or obligate the other party.

J. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the parties hereto. None of the rights or obligations of the parties herein set forth is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or for the benefit of any third party. This Agreement does not create any legal duty by any of the parties, except such contractual duties between them as explicitly stated in the Agreement.

VII. EFFECTIVE DATE

When duly executed by both parties, this Agreement shall be effective as of January 1, 2007.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers and representatives as of the day indicated below.

CITY OF EVERETT

_____
Ray Stephanson, Mayor

Date: _____

CITY OF SULTAN

By _____
Ben Tolson, Mayor

Date: _____

Approved as to form:

_____
James Iles, City Attorney

ATTEST:

_____
Sharon Marks, City Clerk