

RESOLUTION NO. 1828

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAKE FOREST PARK, WASHINGTON, AUTHORIZING
THE MAYOR TO SIGN THE AGREEMENT FOR ANIMAL
SHELTERING SERVICES WITH THE PROGRESSIVE
ANIMAL WELFARE SOCIETY (PAWS)**

WHEREAS, the current Agreement for Sheltering Services with the Progressive Animal Welfare Society (PAWS) expires December 31, 2021; and

WHEREAS, the City desires to continue using PAWS for animal sheltering and has negotiated a new agreement for the period 2022-2024; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Lake Forest Park, as follows:

Section 1. AUTHORIZATION. The Mayor is authorized to sign the Agreement for Animal Sheltering Services with the Progressive Animal Welfare Society, a copy of which is attached as Exhibit A.

Section 2. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

PASSED BY A MAJORITY VOTE of the members of the Lake Forest Park City Council this 9th day of December, 2021.

APPROVED:



Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:



Evelyn Jahed
City Clerk

FILED WITH THE CITY CLERK: December 3, 2021
PASSED BY THE CITY COUNCIL: December 9, 2021
RESOLUTION NO.: 1828

EXHIBIT A to Resolution 1828

Contract No. _____

Brief Description: Animal Sheltering

CITY OF LAKE FOREST PARK AGREEMENT FOR SERVICES

This Agreement is entered into by and between the City of Lake Forest Park, Washington, a municipal corporation hereinafter referred to as the "CITY," and the Progressive Animal Welfare Society, Inc., hereinafter referred to as the "PAWS."

WHEREAS, the City desires to retain the services of a vendor for animal shelter services, and

WHEREAS, the City has established by ordinance regulations regarding animals within the City limits, and

WHEREAS, the City has selected PAWS to perform the above-mentioned services;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is mutually agreed as follows:

1. Scope of Services to be Performed by PAWS.

PAWS shall perform the services outlined in Exhibit A. In performing these services, PAWS shall at all times comply with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

2. Compensation.

A. Services will be paid at the rate set forth in Exhibit A, including all fees and those reimbursable expenses (if any) listed in Exhibit A.

B. The City shall pay PAWS for services rendered after receipt of a billing voucher in the form set forth on Exhibit B. NO PAYMENT WILL BE ISSUED WITHOUT A BILLING VOUCHER. PAWS shall send billing vouchers electronically to Accounting Supervisor, ap@ci.lake-forest-park.wa.us. Payments will be processed within 30 (thirty) days from receipt of billing voucher. PAWS shall be paid for services rendered but, in no case shall the total amount to be paid exceed the amount(s) noted in the Exhibit(s) and approved by the City. PAWS shall complete and return a W-9 to the City prior to contract execution by the City. No payment will be issued without a Taxpayer Identification Number on file.

3. Term.

The term of this Agreement shall commence January 1st, 2022 and ends at midnight on the 31st day of December 2024.

4. Termination.

A. The City reserves the right to terminate this Agreement at any time, with or without cause, by giving sixty (60) days' notice to PAWS in writing. In the event of such termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and

reports, or other material prepared by PAWS pursuant to this Agreement shall be submitted to the City.

- B. In the event this Agreement is terminated by the City, PAWS shall be entitled to payment for all per-animal and per-day fees and reimbursable expenses set forth in Exhibit A and incurred to the effective date of termination, less all payments previously made. This provision shall not prevent the City from seeking any legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due PAWS. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.
- C. PAWS reserves the right to terminate this Agreement with not less than sixty (60) days written notice, or in the event outstanding invoices are not paid within 30 days.
- D. If, upon written notice from PAWS that PAWS is unavailable to perform the scope of services, the City may, at its option, cancel this Agreement immediately.

5. Management of Documents.

- A. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City.
- B. PAWS shall preserve the confidentiality of all City documents and data accessed for use in PAWS' work product.
- C. PAWS agrees to provide the City with all Lake Forest Park-related documents responsive to public records requests received by the City.

6. Independent Contractor Relationship.

- A. PAWS is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between PAWS and the City during the period of the services shall be that of an independent contractor, not employee. PAWS, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, PAWS shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement, and PAWS shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by PAWS is to be paid by it alone, and that by employing such workers, it is acting individually and not as an agent for the City.
- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to PAWS or any employee of PAWS.

7. Hold Harmless.

PAWS shall indemnify, defend, and hold harmless the City, its officers, agents and employees and volunteers, from and against any and all claims, injuries, damages, losses, suits, or liability, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes PAWS waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

The City shall indemnify, defend, and hold harmless the PAWS, its officers, agents and employees and volunteers, from and against any and all claims, injuries, damages, losses, suits or liability, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of PAWS. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

PAWS shall obtain insurance of the types described below during the term of this Agreement and extensions or renewals. These policies are to contain, or be endorsed to contain, provisions that 1) PAWS' insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of PAWS' insurance (except for professional liability insurance); and 2) PAWS' insurance coverage shall not be cancelled, except after thirty (30) days prior written notice to the City.

- A. Professional Liability, Errors or Omissions insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit shall be provided if services delivered pursuant to the Agreement involve or require professional services provided by a licensed professional including but not limited to engineers, architects, accountants, surveyors, and attorneys.
- B. Commercial General Liability insurance covering premises, operations, independent contractors' liability and damages for personal injury and property damage with combined single limits not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate. The City shall be named as an additional insured on this policy. PAWS shall submit to the City a copy of the insurance policy declaration page as evidence of insurance coverage acceptable to the City.
- C. Automobile Liability insurance with combined single limits of liability not less than \$1,000,000 for bodily injury, including personal injury or death and property damage shall be required if delivery of service directly involves PAWS' use of motor vehicles.

9. Delays.

PAWS is not responsible for delays caused by factors beyond PAWS' reasonable control. When such delays beyond PAWS' reasonable control occur, the City agrees PAWS is not responsible for damages, nor shall PAWS be deemed to be in default of the Agreement.

10. Successors and Assigns.

Neither the City nor PAWS shall assign, transfer, or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other. Provided, however, PAWS retains the right to utilize assigned agents to provide animal care through established programs, such as Foster Care or its Placement Partner Program. No delegation or subcontracting of performance of any services, with or without the City's prior written consent, shall relieve PAWS of responsibility to perform services in accordance with this Agreement. PAWS shall be fully responsible for the performance, acts, and omissions of PAWS employees, and any other person who performs or furnishes any services in furtherment of this Agreement.

11. Nondiscrimination.

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status, sexual preference, gender identity or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, or any other status protected under federal or state law. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age [except minimum age] and retirement provisions, marital status, sexual preference, gender identity or in the presence of any sensory, mental, or physical handicap, or any other status protected under federal or state law.

12. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as may be modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City of Lake Forest Park:

City Administrator
City of Lake Forest Park
17425 Ballinger Way NE
Lake Forest Park, WA
98155
206-368-5440

PAWS:

Director of Companion Animal Services
Progressive Animal Welfare Society, Inc.
PO Box 1037
Lynnwood, WA 98046
(425) 412-4029

13. Governing Law and Venue.

This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any dispute arising out of any alleged breach of this Agreement shall first be submitted to non-binding mediation for resolution. If the dispute is not resolved in mediation,

the dispute shall be subject to mandatory and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Venue of any such proceeding shall be in King County, Washington.

14. General Administration and Management.

The City's contract manager shall be Phillip Hill, City Administrator, or his designee.

15. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and PAWS, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

16. Entire Agreement.

This Agreement contains the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

17. Counterpart Signatures.

This Agreement may be executed in one or more counterparts, including by facsimile, scanned or electronic signatures, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

This Agreement is entered into by the parties on the last date signed below.

CITY OF LAKE FOREST PARK

PAWS

By: _____

By: _____

Name: Jeff Johnson

Name: Heidi Wills Yamada

Title: Mayor

Title: Chief Executive Officer

Date: _____

Date: _____

Attest:

By: _____

Evelyn Jahed

City Clerk

Approved as to form:

By: _____

Kim Adams Pratt

City Attorney

Attachments: Exhibits A, B, W-9 (Request for Taxpayer Identification Number and Certification)

EXHIBIT A

SCOPE OF WORK

1. Services Provided

PAWS shall independently provide the following services to the City:

- A. PAWS shall furnish animal shelter services to the City. Animal shelter services shall include sheltering and holding of dogs and cats at facilities operated by PAWS, releasing animals to owners, and disposing of animals that are not claimed by owners after the period prescribed by City ordinance, in a responsible and lawful manner (including adoption or destruction). PAWS, at its discretion, may decline to provide disposal services for residents of the City when the deceased animal in question is owned by the resident or his/her immediate family, and/or has been euthanized by a private veterinarian.
- B. PAWS shall provide veterinary care at the discretion of PAWS' Director of Companion Animal Services or, in his or her absence, his or her designated representative (collectively, "Manager" or "Shelter Manager"). If agreed upon by the Shelter Manager and a licensed veterinarian, ill or injured stray animals, whether licensed or not, whose owners cannot be notified, because the animal has no identification that is traceable or the owner cannot be reached by a single phone call, may be euthanized if the animal is in pain that cannot be relieved by such care as the shelter staff can reasonably provide. PAWS shall have a policy and procedure to follow to euthanize the animal and to reach the owner. When reasonably possible, PAWS shall recover costs from the owner of the animal for such veterinary treatment prior to release of the animal or euthanasia procedure.
- C. PAWS agrees to abide by and strictly follow any and all procedures of Title 6 of the Lake Forest Park Municipal Code, as now or hereafter amended, regulating animals, particularly the provisions of Title 6 related to the duration of impoundment, before disposing of any animals. PAWS and the City agree that Title 6, as now or hereafter amended, is incorporated by reference and shall be part of this Agreement as if set forth in full herein. The City shall provide PAWS with current copies of all applicable policies, procedures, and City ordinances upon execution and the agreement and, at least thirty (30) days prior to the effective date thereof, copies of any amendments affecting PAWS' performance under this Agreement.
- D. If any animal is brought to PAWS by a City official or a Lake Forest Park Animal Control Officer and then claimed by its owner during the applicable holding period, the owner will be solely responsible for paying any and all reasonable fees and costs charged by PAWS for its care and sheltering of the animal. PAWS may choose not to release any sheltered animal to any person until PAWS is reasonably satisfied that the person has paid all applicable, shelter and other fees related to housing and caring for any animal and has evidence of the ownership of said animal.
- E. PAWS will hold unlicensed stray dogs and cats for a period of seventy-two (72) hours from time of delivery, except as provided herein. Stray dogs and cats bearing a current license issued within the State of Washington or positively identified by a Lake Forest Park Animal Control Officer or City Official, or by a traceable microchip, shall be held for a period of ten (10) days. PAWS shall be responsible for delivering notification to owners that their licensed dog or cat has been impounded, unless notification has already been done by a City official or a Lake Forest Park Animal Control Officer, and PAWS has been provided

evidence of such notification. Such notice may be based on information provided by the City in accordance with the City's Animal Control policies and procedures. Attempts of notification shall be made by telephone and/or US Mail using information on the pet's licensing record, if available, or as otherwise provided by the City. PAWS shall release animals to owners within the applicable holding period prescribed herein in accordance with the procedures outlined in Section 1.D of this Scope of Work.

- F. PAWS shall dispose of animals not claimed by an owner once the applicable holding period prescribed herein has expired, either by release for adoption, euthanasia, or transfer to another agency in accordance with applicable laws and terms of this Agreement. PAWS shall not sell any animals to research institutes or licensed dealers for research purposes. Animals held under RCW 16.52.085 will be held for fifteen (15) business days before any disposition of the animal by PAWS.

Any animal not redeemed by its owner during the prescribed holding period or which, in the opinion of a licensed veterinarian or the Shelter Manager, is suffering from serious injury or disease, may be humanely destroyed, or in the discretion of the Shelter Manager may be held for a longer period and redeemed by any person upon payment of reasonable medical and holding costs. Animals deemed dangerous by the City shall not be released to their owners without a court order.

- G. If not claimed by an owner during the applicable holding period, an animal immediately becomes the property of PAWS. Disposition of the animal is then at PAWS' discretion, provided however, that PAWS shall not dispose of an animal while any legal proceedings of which it has notice and relating to the disposition of that animal are pending or in contravention of any court order of which it has notice. Persons adopting animals brought to PAWS and otherwise subject to the provisions of this Agreement will be solely responsible for paying any and all reasonable fees and cost charged by PAWS for its care and sheltering of the animal, in addition to applicable licensing fees, microchipping charges or other fees that PAWS, in its discretion, may charge.
- H. PAWS reserves the right to refuse all animals other than dogs or cats, where, in PAWS' opinion, it does not have the facilities appropriate or available to accommodate the needs of such animal. PAWS further reserves the right to refuse any animal if the animal shelter is at its maximum capacity. The Manager shall have the authority to make such determinations. The Manager can decline an owned animal that needs to be placed on "bite quarantine" if the City's Animal Control Officer approves that the animal can remain at the owner's house or be housed at another boarding facility or veterinary clinic at the owner's sole expense.

2. Compensation

In consideration of PAWS performing the services contemplated by this Agreement, the City agrees to pay an intake fee of \$220.00 for each animal brought to PAWS from the City's jurisdiction for the year 2022. For the years 2023-2024, the intake fee rate will be increased by the June 2022 to June 2023 Seattle-Bellevue-Tacoma CPI-u or 3%, whichever is less. The intake fee dollar amount will be rounded up to the nearest dollar.

For animals that are brought to PAWS by City officials or Lake Forest Park Animal Control Officers and released to their owners prior to the applicable holding period expiring pursuant to Section 1.E. of the Scope of Work, PAWS will attempt to recover the intake fee from the animal's

owner. However, if PAWS is not successful in recovering either the entire intake fee or a portion of the fee, the balance of this intake fee amount will be billed to the City. This includes licensed or unlicensed stray animals found within the City limits of Lake Forest Park and brought to PAWS by a City Official or a Lake Forest Park Animal Control Officer.

PAWS may also charge the City a per day fee of Twenty Dollars (\$20.00) per animal for animals held, at the City's written request, beyond the time periods specified in Section 1.E. of this Scope of Work. In the event of legal proceedings or court order, the City will provide PAWS with prompt written notice of the same and direct that the animal shall be held until further notice.

The above-mentioned payments shall be the sole compensation for work performed and/or services rendered by PAWS, and for supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and incidentals necessary to complete all the services required by this Agreement.

Each month, PAWS shall submit a properly executed invoice to the City to request payment pursuant to Section 1 of this Scope of Work. Said invoices shall indicate the total number of animals handled during the month for the City. Expenditures under this Agreement that are determined by audit to be ineligible for reimbursement and for which payment has been made to PAWS shall be refunded to the City within 30 days of notification. PAWS shall maintain adequate records to support billings. Said records shall be maintained for a period of at least three (3) years after completion of this Agreement by PAWS.

3. Work and Facility Inspection

The City reserves the right, upon reasonable notice, to inspect, review and approve the work and facilities of PAWS to assure that it has been completed as specified, prior to payment.

4. Representations

PAWS represents and warrants that it has the requisite training, skill and experience necessary to provide the services and is appropriately accredited and licensed by all applicable agencies and governmental entities.

5. Property and Confidential Information

PAWS shall not, without the prior written consent of the City, disclose to third parties information it obtains from the City that is not otherwise subject to public disclosure unless:

- The information is in the public domain at the time of disclosure by PAWS;
- The information is also received by PAWS from a third party who does not have an obligation to keep the same confidential; or
- The information is subject to court order or lawfully issued subpoena.

6. Collaboration

The City and PAWS will collaborate to promote responsible guardianship and attempt to reduce future sheltering and animal control costs. The City will continue to support the community's movement to a safer and more humane environment by participating with PAWS as follows:

- a) The City will continue to ensure that information on lost/found pets and licensing information is presented on the City website including appropriate links to PAWS and animal control providers.

- b) The City will work with PAWS to be visible in the community through appropriate and available city events and educational information. Examples of the type of events that offer collaborative opportunities follow:

Example: The City will sponsor an annual “license and microchip day” event. PAWS will be responsible for performing the microchipping of cats and dogs on this day at their shelter facility under the supervision of a licensed veterinarian. The City will bear the costs of the microchips for City residents at the approximate cost of five dollars (\$5) each. The City will promote the event encouraging pet owners to get their pet licensed and microchipped on the same day.

Example: The City will sponsor an annual low-cost “spay and neuter” day at PAWS which focuses on the prevention of litters and reduces free-roaming cat populations. As a sponsor of this event the City promote the event encouraging low-income pet owners to get their pet spayed/neutered and benefit from the lower priced licenses (it is ½ the fee compared to the licenses for unaltered pets).

EXHIBIT B**CITY OF LAKE FOREST PARK
BILLING VOUCHER**

17425 Ballinger Way NE, Lake Forest Park, WA 98155, (206) 368-5400

Contract No. _____

Firm Name: _____

Mailing Address: _____

Invoice No.: _____**Invoice Date:** _____**Amount of Invoice: \$**_____

Contract Expiration Date: _____ Current Invoice Period: _____

Description of services performed this period, attach a separate sheet if necessary (if applicable, submit a separate voucher for each program which is funded by your City of Lake Forest Park contract):

BUDGET SUMMARY:

Total Contract Amount (including amendments)	\$_____
Previously Billed	\$_____
Current Invoice Request	\$_____
Total Payments Requested to date	\$_____
Contract Balance Remaining	\$_____

Payments will be processed within thirty (30) days from receipt of approved billing voucher.

Consultant Signature*For Department Use Only*

Approved for Payment:

City of Lake Forest Park

Date: _____

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ----- <input type="checkbox"/> Other (see instructions) ▶	
<input type="checkbox"/> Exempt payee	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign
Here**

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹See Form 1099-MISC, Miscellaneous Income, and its Instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ³
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ⁴
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

²Circle the minor's name and furnish the minor's SSN.

³You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.consumer.gov/idtheft or 1-877-IDTHEFT(438-4338).

Visit the IRS website at www.irs.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.