

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
NCAH, INC. DBA NEWPORT CENTER ANIMAL HOSPITAL**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 21st day of January, 2018 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and NCAH, INC., a California corporation DBA NEWPORT CENTER ANIMAL HOSPITAL ("Contractor").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide animal shelter services, as more fully described herein; and

B. WHEREAS, Contractor represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City and Contractor desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONTRACTOR

1.1. Scope of Services. Contractor shall provide the professional services described in the Scope of Services, attached hereto as Exhibit "A," and Contractor's Proposal, attached hereto as Exhibit "B," both incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Contractor pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Contractors in similar fields and circumstances in accordance with sound professional practices. Contractor also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Contractor's performance of this Agreement.

1.3. Performance to Satisfaction of City. Contractor agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Contractor to review the quality of the work and resolve the matters of concern;

- (b) Require Contractor to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Contractor warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Contractor shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Contractor's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Contractor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Contractor acknowledges that City may enter into agreements with other Contractors for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Contractor may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Contractor's sole cost and expense.

1.8. Confidentiality. Employees of Contractor in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Contractor's covenant under this Section shall survive the termination of this Agreement.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Contractor shall be paid in accordance with the fee schedule set forth in Exhibit B. Contractor's monthly compensation shall not exceed Twenty Thousand Eight Hundred Thirty-Three Dollars (\$20,833.00). Notwithstanding the foregoing, if City requires animal shelter services for more than three hundred thirty-three (333) animals during the term of this Agreement, or if animals are held beyond the holding period set forth herein, Contractor shall be paid for such additional services in accordance with the fee schedule set forth in Exhibit B.

2.2. Additional Services. Contractor shall not receive compensation for any services provided outside the scope of services specified in the Contractor's Proposal unless the City or the Project Manager for this Project, prior to Contractor performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Contractor may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Contractor's services which have been completed to City's sole satisfaction. City shall pay Contractor's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Contractor's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of five (5) months, ending on June 20, 2018, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Contractor. The termination of this Agreement by City shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

Contractor may terminate this Agreement, with or without cause, by providing sixty (60) days written notice to City. Such termination shall be deemed effective sixty (60) days from City's receipt of the notice of termination.

4.3. Compensation. In the event of termination, City shall pay Contractor for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Contractor.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Contractor in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Contractor, at no cost to City. Any use of uncompleted documents without specific written authorization from Contractor shall be at City's sole risk and without liability or legal expense to Contractor.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract

work. Contractor shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Contractor's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Contractor shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "C" and incorporated herein by this reference.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior

writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Contractor shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Contractor called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Contractor in the performance of this Agreement.

Contractor shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Contractor or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONTRACTOR:

Newport Center Animal Hospital
1333 Avocado Ave.
Newport Beach, CA 92660
Tel: (949) 644-5460
Attn: Anthony Rizk, DVM

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5370
Attn: Captain Mark Manley

Courtesy copies to:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Justin Martin

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Contractor shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit

"D" and incorporated herein by reference. Contractor's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Contractor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Contractor's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Contractor of Contractor's obligation to perform all other obligations to be performed by Contractor hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Contractor agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the Contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Contractor's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Contractor is and shall be acting at all times as an independent contractor and not as an employee of City. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation,

Unemployment Compensation, and other payroll deductions for Contractor and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Contractor shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor further agrees to indemnify and hold City harmless from any failure of Contractor to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.12. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require.

6.13. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Contractor or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Contractor agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Contractor. City shall indemnify and hold harmless Contractor from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Contractor. Contractor shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.14. Public Records Act Disclosure. Contractor has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Contractor, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*).

Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Contractor informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.15. Conflict of Interest. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.16. Responsibility for Errors. Contractor shall be responsible for its work and results under this Agreement. Contractor, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Contractor occurs, then Contractor shall, at no cost to City, provide all necessary design drawings, estimates and other Contractor professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.17. Prohibited Employment. Contractor will not employ any regular employee of City while this Agreement is in effect.

6.18. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.19. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.20. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.21. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.22. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with

respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.23. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.24. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

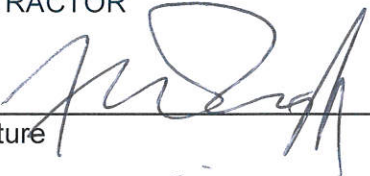
6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.27. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CONTRACTOR




Signature

Date: 1/18/18

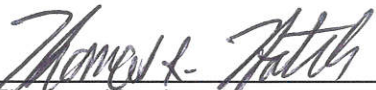
Anthony Rizk

Name and Title



Social Security or Taxpayer ID Number

CITY OF COSTA MESA



Thomas Hatch
City Manager

Date: 1/18/18

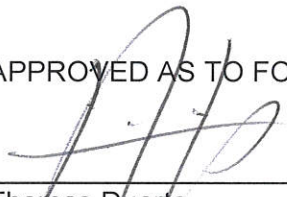
ATTEST:



Brenda Green
City Clerk



APPROVED AS TO FORM:



Thomas Duarte
City Attorney

Date: 1/18/18


APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 1/18/18

APPROVED AS TO CONTENT:



Justin Martin
Project Manager

Date: 1/18/18

DEPARTMENTAL APPROVAL



Robert Sharpnack
Police Chief

Date: 1/18/18

APPROVED AS TO PURCHASING:



Stacy Daugherty
Finance Director

Date: 1/18/18

EXHIBIT A
SCOPE OF SERVICES

Animal Shelter Scope of Services

1. Animal Acceptance

- a. Acceptance of Animals. Contractor shall accept dogs, cats, and small animals, including reptiles, birds, goats, pigs, or other small animals brought to the facility by the City's Animal Control Officers, including live stray domestic animals, deceased animals for disposal, and owner-releases for adoption or euthanasia. Contractor shall also accept such animals brought to the facility by City residents.
- b. Open Shelter Policy. Contractor shall maintain an "open shelter policy" and accept all dogs and cats brought in by *City residents* and/or found *within City limits*. Such policy prevents City residents and/or animals from being denied and alternately placed in the care of the Orange County Animal Care (OCAC). The open shelter policy does not apply to non-City residents or animals found outside City limits.
- c. Drop-Off Procedures. Contractor shall provide a procedure whereby animals may be delivered to the facility. The procedure shall provide City's Animal Control Officers with flexibility in drop-off times. City Animal Control Staff shall be permitted to access the shelter portion of the facility seven (7) days per week during regular business hours.

2. Shelter Operations

- a. Facility Requirements. Contractor shall provide an adequate number of dog kennels, cat cages and separate areas for animals in quarantine and/or isolation designated for City's animals, which shall include, at a minimum:
 - 10 kennels for dogs under normal conditions
 - 5 kennels for dogs under quarantine
 - 5 kennels for dogs in isolation
 - 10 kennels for cats under normal conditions
 - 10 kennels for cats under quarantine and/or isolation

Contractor shall adhere to the guidelines relating to dog kennel and cat cage sizes, including related amenities, that are set forth in The Association of Shelter Veterinarians *Guidelines for Standards of Care in Animal Shelters* ("ASV Guidelines"), incorporated by this reference as if fully set forth herein. Contractor shall maintain the facility in accordance with the ASV Guidelines, including but not limited to the sanitation guidelines set forth therein.

- b. Animal Care. Contractor shall provide the proper care and protection of all animals in Contractor's custody. Adequate food and housing shall be provided and the facility shall not be overpopulated. Contractor shall maintain sanitary conditions for all animals housed at all times and provide adequate storage of deceased animals in an area out of view from the general public.
 - i. Intake. Upon intake, the Contractor shall provide a general physical exam and immediate general care if needed, which shall include vaccinations for dogs and cats under the age of one year with no owner information or prior vaccination history available that are deemed healthy to receive the vaccinations. Upon request from the City, Contractor shall also vaccinate animals that are over one

year old that City anticipates being held at the facility for an extended period. Vaccinations of such animals shall not include rabies vaccinations.

- ii. Food and Water. Contractor shall provide adequate food and water, at Contractor's expense, to all City animals in Contractor's custody. Type and brand of food may be mutually agreed upon between the Contractor and the City's Animal Control Officers.
- c. Veterinary Services. Veterinary services must be available to impounded City animals during normal business hours. In the event a veterinarian is required to perform routine or emergency medical services for any sick or injured animal delivered to the facility, the charge to the owner of said animal shall be accordance with the fee schedule set forth in Contractor's Proposal.
- d. Holding Requirements.
 - i. Animals shall be held in accordance with the requirements of sections 31108 and 31752 of the California Food and Agriculture Code, unless otherwise requested by City's Animal Control Officers. Notwithstanding Sections 31108 and 31752, the holding period for impounded animals shall be seven (7) days.
 - ii. Contractor shall ensure that animals with police holds, quarantines, or pets held in protective custody are in an isolated area not permitted within view or access of the public. Quarantined animals shall be separated from other animals with proper ventilation.
 - iii. Upon direction from City's Animal Control, Contractor shall hold animals longer than the above stated retention period for police purposes, such as quarantine, vicious animal investigations, nuisance enforcement, or cruelty investigations.
- e. Euthanasia. At the request of the City's Animal Control personnel with concurrence from the treating veterinarian, or at the sole discretion of the veterinarian, Contractor shall arrange and/or provide for the humane euthanasia and disposal of animals that have been declared vicious, terminally ill, or contagious. This shall be accomplished in a manner approved by Federal and State regulations, which shall not subject animals to any unnecessary pain.
 - i. No impounded animal shall be euthanized or otherwise disposed of without notice to the owner, if such person is known. Contractor shall make all reasonable attempts to reunite animals with their owner before euthanasia or adoption, to include accessing current licensing records, using tag contact information (provided tags worn by the animal), and scanning all animals to detect implanted computer chips.
 - ii. Upon proof of certified controlled substance training by the City's Animal Control personnel, Contractor will provide City's Animal Control with controlled substances necessary to perform field captures and euthanasia. The controlled substances will be charged to the City at the same cost paid by veterinarians.
 - 1. Telazol (class III drug, 100mg/ml concentrate, used primarily in dog capture)
 - 2. Ketamine (class III drug, 100mg/ml for cats and subhuman primates and some dog captures)
 - 3. Sodium Pentobarbital (class II drug, 250 ml bottle, for euthanasia only)

f. Animal Disposal.

- i. Deceased Animals. Deceased animals shall be disposed in accordance with applicable laws.
 - ii. Unclaimed Animals. Contractor shall provide for the humane disposal of unclaimed deceased animals after holding such animals for the holding period agreed upon by City and Contractor, unless the condition of an animal requires immediate disposal. Costa Mesa Animal Control will make reasonable efforts to locate the owners of deceased animals during such holding period. Contractor shall under no circumstances sell unclaimed deceased animals for purposes of medical research or other activities which may harm them without the prior written consent of City's Animal Control.
- g. Adoptions. Contractor shall provide all required pre-adoption medical procedures, including but not limited to spaying and neutering and vaccinations, at no additional cost to City. Contractor shall permit relinquishment of adoptable animals to another contractor and/or non-profit organization, as chosen by the City, in order to facilitate further care and/or adoption services. Contractor shall allow City residents who bring in stray dogs and/or cats to the Contractor the first opportunity to adopt them before they are made available to the general public.
- h. Rabies Vaccinations. Contractor shall administer rabies vaccinations to each dog prior to adoption or redemption by their owner unless proof of current rabies inoculation is furnished at the time of release.
- i. Lost-and-Found. Contractor shall provide lost-and-found and referral services as required by the California Food and Agriculture Code Section 32001, subdivisions (a) through (e).
- j. Animal Cruelty Investigations. Contractor shall provide support in animal cruelty investigations by performing examinations, necropsies, reports, or other procedures necessary to the case.

3. Records

- a. Contractor shall maintain health treatment records, if applicable, and statistical records for all animals it handles.
- b. Contractor shall keep comprehensive records and submit regular monthly reports to the City's Animal Control Department. Reports shall, at a minimum, include the number of impounds, disposition of each animal, and any fee collected that are payable to the City of Costa Mesa. The City may also require additional information, which includes, but is not limited to the following, as applicable:
 - Description of the animal's including breed, color, gender, size, and behavioral disposition
 - Who brought the animal in, the date the animal was brought in, and where and how the animal was obtained
 - Animal's owner (if known)
 - Duration of stay

- When the animal was euthanized and reason
- Disposition of all complaints regarding animal(s)
- All dangerous and potentially dangerous animals and dog bite incidents
- Fees collected
- Records of licenses sold with names and addresses

4. **Fees**

- a. Contractor shall establish fees for impoundment, feeding, care, veterinarian services, and disposition of animals. Said fees shall be charged to members of the public whose animals are subject to this Agreement. Dog license fees will be collected on behalf of the City from dog owners, when applicable.
- b. Contractor shall be responsible for collecting all fees due to the City (e.g. license fees, spay/neuter fines, subsequent impound fees, etc.), issuing receipts for payment, and remitting monies due to the City directly to the City's Animal Control staff prior to releasing the animals. Collected fees shall be remitted to the City within 10 working days following the end of the prior month.
- c. When charging subsequent impound fees, the 12-month period used to determine the fee charged for subsequent impounds shall be the 12 months subsequent to the current impoundment. Contractor shall charge Costa Mesa residents redeeming animals from impound an impound fee of forty dollars (\$40) for the first impoundment, sixty dollars (\$60) for the second impoundment within a 12-month period, and ninety dollars (\$90) for the third and subsequent impoundments within a 12-month period.
- d. Contractor shall collect a mandatory non-spayed or un-neutered fee in accordance with Food and Agriculture Code sections 30804.7 and 31751.7, which shall be remitted to the City. The Contractor shall honor spay or neuter vouchers, issued by the City and distributed to low income families.

5. **Miscellaneous**

- a. In addition to almost daily inspections by Animal Control staff, the City may conduct one (1) inspection of the premises each week, accompanied by Contractor, for the purpose of inspecting the premises for compliance with the obligations set forth herein. City and Contractor shall mutually agree upon the date and time of each inspection. Additional inspections and tours can be scheduled as needed.
- b. City and Contractor may mutually agree to welcome volunteers to work on the premises to assist with the care of animals that come into the facility under City authority. All volunteers shall be approved and trained by the Costa Mesa Police Department and managed by the Costa Mesa Parks and Community Services Department. All volunteers will work through a City designated volunteer coordinator.
- c. City may request, and the Contractor may supply, special Animal Control Services not otherwise provided herein, including agreed upon services, the retention of the animals related to criminal prosecutions for other than violation of animal control regulations or ordinances.

EXHIBIT B
CONTRACTOR'S PROPOSAL

**Newport Center Animal Hospital
Proposal for Animal Shelter Services
City of Costa Mesa**

Newport Center Animal Hospital is a full-service animal hospital with a large, luxury boarding pet hotel facility. The facility is open seven days a week and a doctor is on the premises six days per week and available on-call Sundays. The hospital is equipped with an in-house laboratory, in-house pharmacy, digital imaging including radiography, ultrasound and digital dental radiographs. We feature a state of the art surgical suite with full monitoring equipment. Laser surgery and laser therapy are available.

Our boarding facility features a sanitary and spacious environment for animals to be boarded. Our residents enjoy at least two walks daily. All suites are indoors and temperature controlled. Most of our boarding suites feature plexiglass enclosed which helps to prevent the spread of communicable diseases which is crucial for shelter medicine.

We will work closely with the City in regards to the adoption process. Adoptions will be off-site at this time. City employees/Animal Control Officers will coordinate the handling of adoptions and will arrange for pickup of newly adopted pets from NCAH to a third party location. The general public will not have access to view animals within the facility; however, in circumstances where a Costa Mesa resident brings in a stray animal and requests to adopt that animal if not redeemed at the conclusion of the seven-day impound period, appointments can be coordinated to have potential owners meet prospective pets on site.

This process is critical to the success of our agreement to prevent overcrowding and in order to achieve our ultimate goal of having animals placed in homes.

In the event a Costa Mesa resident brings in a stray animal and requests to adopt that animal at the conclusion of the seven-day impound period, NCAH may collect adoption fees from the adopting private party, as outlined in Fee Schedule A.

NCAH will provide medications and sedatives to Costa Mesa Animal Control Officers as needed. Cost of controlled substances is **not** included in this Fee Proposal.

NCAH will provide:

- Initial entry exams
- Pre-adoption exams (prior to pet release to third-party adoption agency)
- Pre-adoption spay/neuter services (prior to pet release to third-party adoption agency)
- Vaccinations
- Microchip placement and enrollment
- Free follow-up post-adoption exam at NCAH (even if adopted out by third-party adoption agency)
- Veterinary care until adopted
- Collection of redemption fees for City
- Daily walking of all dogs
- Daily walk-through visual exams
- Discounted pricing on basic hospital services (Fee Schedule B)

Pets redeemed to an owner where the pet is not spayed/neutered will need to pay a spay/neuter fine and a license fee, as applicable. Any adopted animal under six months will need to return for to NCAH for spay/neutering services once they are six months old. Severely geriatric patients or patients medically unable to withstand anesthesia will be exempt from this.

Fee Proposal:

Term of the five-month contract is January 21, 2018, through June 20, 2018. Contract includes animal shelter services for 800 animals per year, or 333 animals during the five-month contract period.

Cost for the term of January 21, 2018 through June 20, 2018: \$250,000 per year, or \$20,833 per month (\$104,165 over the 5-month contract period).

Additional costs include:

Additional animals over 800 per year (over 333 during five-month period): \$24.00 per additional animal.

Animals held upon conclusion of the seven-day impound period, starting with day eight: \$10.00 per animal, per day.

In the event full adoption services are requested by the City to be conducted on site at NCAH during the term of this 5-month contract, or the facility has reached its maximum capacity for animals, the City may incur costs to NCAH in order to shelter additional animals beyond the 7-day hold period. Costs may include:

- Cost to care and shelter adoptable animals until adoption
 - Additional mobile/temporary isolation/quarantine holding cages to meet City requirements
 - Hydraulic scissor lift for third level kennel boarding use
-

Fee Schedule A

During the term of the 5-month contract, adoption services will occur off-site of NCAH. Adoptions will be the responsibility of the City to coordinate with a third-party adoption agency.

The exception is the event a Costa Mesa resident brings in a stray animal and requests to adopt that animal at the conclusion of the 7-day impound period, NCAH will collect adoption fees from the adopting private party, as outlined below.

- Puppies (Below a year) \$150
- Dogs (1 year +) \$130
 - Pits & Pitbull Mixes (1 year +) \$65
- Kittens \$110
- Cats \$90
- Senior Dogs/Cats (7 years +) \$65

Fee Schedule B

The following fee schedule is for veterinarian services required for animals under City impound that are subsequently released to the animal's owner. Fees are to be paid by the owner to NCAH prior to release. These fees will not be incurred by the City if the animal is not redeemed.

Roundworm & Strongid	\$21.00
Tape worm/Droncit	\$25.00
Rabies Vaccine	\$15.00
DHPP	\$35.00
Corona	\$18.00
Bordatella	\$18.00
Emergency Flea Treatment	\$8.00
30-Day Flea Treatment	\$25.00
FVRCP	\$35.00
FeLV	\$39.00
Fecal w/Giardia	\$58.00
Parvo	\$41.80
Panleuk Test	\$41.80
Feline Viral Test	\$49.20
Fungal Exam	\$25.00
Fungal Culture	\$169.00
CBC	\$64.00
Chemistry	\$85.00
Radiographs	\$150.00