

**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND PETS IN NEED
FOR PROFESSIONAL SERVICES**

2019
EJ
This Professional Services Agreement ("Agreement") is entered into on this 17 day of January, ~~2018~~ by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY" or "City of Palo Alto"), and PETS IN NEED, a California non-profit public benefit corporation, located at 871 Fifth Ave, Redwood City, CA 94063 ("CONSULTANT" or "Pets In Need").

RECITALS

The following recitals are a substantive portion of this Agreement and are hereby incorporated herein by this reference.

A. CITY intends to provide animal sheltering and veterinary care, as more fully described in Exhibit "A" (Scope of Services), attached to and made a part of this Agreement, for the City of Palo Alto, and for the City of Los Altos and the Town of Los Altos Hills (the "Contract Cities"), at the Palo Alto Animal Shelter, 3281 East Bayshore Road, Palo Alto, CA 94303 (the "Palo Alto Animal Shelter" or the "Premises").

B. CITY and CONSULTANT desire for CONSULTANT to perform the Services (as defined below) at the Palo Alto Animal Shelter pursuant to the terms and conditions set forth in this Agreement.

C. CITY acknowledges that CONSULTANT is entering into this Agreement in furtherance of its no-kill mission, and that, to the extent permitted by law, CONSULTANT will operate the Palo Alto Animal Shelter as a no-kill shelter.

D. CITY and CONSULTANT are entering into this Agreement with the intention of establishing a long-term partnership to offer exceptional shelter services for Palo Alto and its partner cities of Los Altos and Los Altos Hills, while working together towards building a new Pets in Need Palo Alto animal shelter facility.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the services described at Exhibit "A" ("Services") in accordance with the terms and conditions contained in this Agreement.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution (the "Effective Date") and continuing for five (5) years from the Effective Date, unless terminated earlier pursuant to Section 19 of this Agreement. The term of this Agreement may be renewed or extended upon the mutual written agreement of the parties. One year prior to the expiration of the term (or other such timeline as may be mutually agreed upon by the parties), either party may request the parties to begin negotiating in good faith a renewal or extension of this Agreement.

SECTION 3. USE OF PREMISES. CONSULTANT's use of the premises shall be subject to the additional terms set forth on Exhibit "D" (Use of Premises) attached hereto.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services shall be in the amount of, and shall not exceed three-million, four-hundred forty thousand six-hundred twenty six dollars and ten cents (**\$3,440,626.10**) as detailed in Exhibit "B" (Compensation). CONSULTANT agrees to complete all Services within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY. Notwithstanding the foregoing, a contingency fund of two-hundred thousand dollars (**\$200,000**) (the "Contingency Fund") shall be available; as well as a fund for the compensation of renovation delays ("Compensation of Renovation Delays Fund") of sixty thousand dollars (**\$60,000**) shall be available, as detailed in Exhibit "B" (Compensation). In the event the Contingency Fund and the Compensation of Renovations Delays Fund are utilized as provided for herein, the total compensation for Services, reimbursable expenses and the costs payable by CITY to CONSULTANT under this Agreement, shall be and shall not exceed three million, seven-hundred thousand, six-hundred twenty-six dollars and ten cents (**\$3,700,626.10**) as detailed in Exhibit "B" (Compensation), subject to Section 19 ("TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES").

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall invoice the CITY for payment on a monthly basis. Invoices shall describe the services performed and, if reasonably requested by CITY, supporting documentation. CONSULTANT's invoice shall be submitted to the City's project manager for payment at which point the CITY has 30 business days from the date of the submission to render payment to the CONSULTANT. Invoices must also include CONSULTANT name, address, contract number, description of services, date of services, and compensation amount.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform or supervise, as applicable, the Services required by this Agreement and that its personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, and its employees have and shall maintain (and that it shall require its subcontractors, if any, to have and maintain) during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

Notwithstanding anything to the contrary in this Agreement, the representations and warranties in this Section 6 are exclusive and are in lieu of all other warranties of any kind, whether express or implied (including, without limitation, the implied warranties of merchantability, fitness for a particular purpose and noninfringement, and all warranties that may arise from course of dealing, course of performance or usage of trade), all of which are hereby expressly disclaimed.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that are applicable to the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of correcting such errors and omissions, any change order markup costs, or costs arising from delay caused by such errors and omissions or unreasonable delay in correcting such errors and omissions.

SECTION 9. [RESERVED].

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, any person employed by CONSULTANT, and any subcontractor retained by CONSULTANT to perform any of CONSULTANT'S obligations under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations without the prior written consent of the City Manager. The City Manager shall have sixty (60) days from receipt of Consultant's notice of proposed assignment to accept or decline the proposed assignment in writing. If the City Manager declines the proposed assignment, he or she shall state the basis for the decision in the written notice to CONSULTANT. Consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment not expressly contemplated under this Agreement, or made without the approval of the City Manager shall be void.

SECTION 12. SUBCONTRACTING. Notwithstanding Section 11 above, CITY agrees that subcontractors may be used to perform CONSULTANT'S obligations under this Agreement. The subcontractors authorized by CITY to perform work on this Project are:

- a. Sage Veterinary Center; and
- b. Pets Rest Cemetery, and
- c. Any other subcontractors retained by CONSULTANT to perform CONSULTANT'S obligations under this Agreement.

CONSULTANT shall be responsible for directing the work of any subcontractor and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning subcontractor compensation.

CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subcontractor as more fully set forth in Section 16 of this Agreement.

CONSULTANT shall change or add a subcontractor to perform the Services set forth on Exhibit A hereto only with the prior approval of the City Manager or his designee (such approval not to be unreasonably withheld, delayed or conditioned). The City Manager shall have thirty (30) days from receipt of CONSULTANT's request to approve or decline in writing CONSULTANT's request to change or add subcontractors.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT shall assign its executive director, who currently is Al Mollica, as the project manager to have supervisory responsibility for the performance, progress, and execution of the Services and as the project coordinator to represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the project manager (including if, at

any time, Al Mollica no longer serves as executive director of CONSULTANT), CONSULTANT shall promptly notify the CITY's project manager of such substitution and consider in good faith CITY's requests with respect to such substitution.

The parties agree that during the term of this Agreement and for all purposes of this Agreement, CONSULTANT'S project manager shall be authorized to act as the "Superintendent" of the City's animal services division pursuant to Section 6.04.100 of the Palo Alto Municipal Code, for purposes of [Sections 6.12.010, 6.12.030, 6.12.050, 6.16.050, and 6.32.040 of the Palo Alto Municipal Code.

CITY's project manager is the Director of Community Services, Community Services Department, 1305 Middlefield Road, Palo Alto, CA 94303, Telephone (650) 463-4900, who is currently Monique leConge Ziesenhenné. The project manager shall be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate project manager from time to time with prompt written notice to CONSULTANT.

SECTION 14. INTELLECTUAL PROPERTY RIGHTS.

14.1 Definition of Intellectual Property Rights. "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret or confidentiality rights, trademarks, goodwill, trade names, logos and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

14.2 "Pets In Need" Ownership. The parties acknowledge and agree that, as between the parties, Pets In Need owns all Intellectual Property Rights in its name ("Pets In Need"), logos and marks, as may be amended from time to time by Pets In Need.

14.3 "City of Palo Alto" Ownership. The parties acknowledge and agree that, as between the parties, the City of Palo Alto owns all Intellectual Property Rights in its name ("City of Palo Alto"), logos and marks, as may be amended from time to time by the City of Palo Alto, and in accordance with Palo Alto Municipal Code as may be amended from time to time.

14.4 "Palo Alto Animal Shelter" Ownership. The parties acknowledge and agree that, as between the parties, the City of Palo Alto owns all Intellectual Property Rights in the name "Palo Alto Animal Shelter".

14.5 Grant of License by City of Palo Alto. The City of Palo Alto hereby grants to Pets In Need a royalty-free, non-transferable term license, for the term of this Agreement, to use, reproduce, make derivative works, display, and perform publicly the name "Palo Alto Animal Shelter" solely in conjunction with "Pets in Need", for example, and without limitation, "Pets in Need Palo Alto Animal Shelter" and "Palo Alto Animal Shelter, operated by Pets in Need," for purposes of the performance of this Agreement, as provided for herein.

14.6 Name Changes; Development of Logos or Marks. Any name changes, derivative works, or logos or marks as may be developed by Pets In Need with regard to such animal shelter are required to be approved in writing by the City of

Palo Alto City Manager or designee prior to any publication, or any other public use, in any form or media. The City Manager shall approve or deny such requests in writing within 45 days of receipt of CONSULTANT's complete written proposal, and shall set forth its basis for any denial in writing. During the term of this Agreement, the City of Palo Alto shall not change such name of such animal shelter, nor develop any derivative works, or logos or marks, with regard to such animal shelter, except as is mutually agreed in writing with the Pets In Need Executive Director or designee prior to any publication, or any other public use, in any form or media. The City Manager shall approve or deny such requests within 45 days of Consultant's complete written proposal, and shall set forth its basis for any denial in writing. Notwithstanding anything to the contrary in this Agreement, CITY agrees that CONSULTANT may offer naming rights for any wing, room, kennel, or other area within the shelter in compliance with the City's Naming Policy and Procedure.

14.7 Limitations on "Pets In Need Palo Alto Animal Shelter".

The City of Palo Alto agrees that its use of the name "Pets In Need Palo Alto Animal Shelter", and as may be changed as provided for herein, with regard to the animal shelter that is the subject of this Agreement, as well as any logos or marks that may be developed and approved as provided for herein with regard to such shelter, are strictly limited to the term of this Agreement, and that, unless otherwise agreed by the parties in writing, upon expiration or termination of this Agreement, the City of Palo Alto shall cease and desist all use of such names, logos and marks with regard to such animal shelter in relation to the ongoing operation of such shelter as of the date of such termination or expiration.

14.8 Use of City of Palo Alto Seal or Logo.

Any use by Pets In Need of any City of Palo Alto seal or logo is required to be approved in writing by the City of Palo Alto City Manager or designee prior to any publication or any other public use, in any form or media, and in accordance with Palo Alto Municipal Code as may be amended from time to time, provided that the City Manager or his designee shall approve or deny in writing a written request by Pets in Need within ten (10) days of the date of the request, and shall set forth his or her basis for any denial in writing.

14.9 Use of Pets in Need Seal or Logo.

Any use by the City of Palo Alto of any Pets In Need seal or logo is required to be approved in writing by the Pets In Need Executive Director or designee prior to any publication, or any other public use, in any form or media, provided that the Executive Director of PIN or designee shall approve or deny in writing a written request by CITY within twenty (20) days of the date of the request.

14.10 Reservation of Rights.

All Pets In Need Intellectual Property Rights not expressly granted under this Agreement are reserved to and retained by Pets In Need. All City of Palo Alto Intellectual Property Rights not expressly granted under this Agreement are reserved to and retained by the City of Palo Alto.

SECTION 15. AUDITS. CONSULTANT shall permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to CONSULTANT'S performance of the Services under this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY; LIMITATION OF LIABILITY.

16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and

agents (each a "CITY Indemnified Party") from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including reasonable attorneys' fees, experts fees, court costs and disbursements ("Claims") to the extent resulting from, or arising out of (i) any act or omission of CONSULTANT that is outside the scope of CONSULTANT's authority under this Agreement and/or (ii) the negligence or willful misconduct of CONSULTANT or its officers, employees, agents or subcontractors in the performance of this Agreement. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONSULTANT, its directors, officers, employees and agents (each a "CONSULTANT Indemnified Party") from and against any and all third party Claims to the extent resulting from or arising out of (i) the negligence or willful misconduct of CITY or its officers, employees, agents or subcontractors in the performance of this Agreement, (ii) any condition in or about the Premises, except to the extent caused by the negligence or willful misconduct of CONSULTANT or a CONSULTANT Indemnified Party, or (iii) CITY's decision to transition to a consultant-provided service delivery model and City's decision, based on CONSULTANT's representations contained in its proposal to the City and herein, to contract with CONSULTANT to provide the Services.

16.2. In the event of concurrent negligence of more than one party, its Council members (or directors), officers, employees, agents or subcontractors, the liability for any and all Claims shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified. Nothing in this Agreement shall constitute a waiver or limitation of any rights that a party may have under applicable law in the event of concurrent negligence of persons or entities other than the parties to this Agreement.

16.3. The parties agree to cooperate with each other in the investigation and disposition of third-party Claims hereunder. It is the intention of the parties to reasonably cooperate in the disposition of all such Claims. Such cooperation may include joint investigation, defense and disposition of claims of third parties hereunder. The parties agree to promptly inform one another whenever an incident report, claim or complaint is filed or when an investigation is initiated concerning this Agreement. Notwithstanding the foregoing, in the event of a conflict in interest, each party may conduct its own investigation and engage its own counsel.

16.4. Each party agrees to mitigate any loss or damage which it may suffer in consequence of any breach by the other party of the terms of this Agreement, or any fact, matter, event or circumstance giving rise to a Claim.

16.5. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR ELSEWHERE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH POTENTIAL CLAIM, LOSS OR DAMAGE.

16.6. LIMITATION OF LIABILITY OF CITY. EXCEPT WITH REGARD TO CITY'S OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS THE CONSULTANT PURSUANT TO THIS SECTION 16, CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED FOR IN SECTION 4 (NOT TO EXCEED COMPENSATION) OF THIS AGREEMENT.

16.7. LIMITATION OF LIABILITY OF CONSULTANT. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT OF CONSULTANT TO CITY EXCEED FIVE MILLION DOLLARS.

16.8. CITY represents and warrants that (i) it has complied with Section 2.30.250 of the Palo Alto Municipal Code and (ii) the CITY's indemnification obligations contained in this is Section 16 represent the valid and enforceable obligations of CITY.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, shall not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law. No waiver of a condition or nonperformance of an obligation hereunder is effective unless it is in writing signed by the authorized representatives of the parties hereto and, as applicable, approved as required under the Palo Alto Municipal Code or Charter.

SECTION 18. INSURANCE. CONSULTANT, at its sole cost and expense, shall obtain, as soon as practicable following the date of this Agreement, and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "C". CONSULTANT shall be responsible for ensuring that its subcontractors retained to perform Services under this Agreement, if any, shall obtain and maintain in full force and effect during the term of the subcontractor's engagement, the insurance coverage described in Exhibit "C," as well as a policy endorsement naming CITY as an additional insured under any policies required in this Section 18.

18.1. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California.

18.2. CONSULTANT shall file with CITY certificates evidencing such insurance as soon as practicable following the date of execution of this Agreement but in any event prior to the first day any of CONSULTANT'S obligations are performed hereunder. The certificates shall be subject to the approval of CITY's Risk Manager and shall contain an endorsement stating that the insurance is primary coverage and shall not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within five (5) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.3. The procuring of such required policy or policies of insurance will not be construed to limit either party's liability hereunder nor to fulfill the indemnification provisions of this Agreement.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may terminate this Agreement or suspend

the performance of the Services, in whole or in part, in the event of a material breach of CONSULTANT's obligations to CITY under this Agreement, which breach is not cured by CONSULTANT within (60) days of receipt of written notice from CITY to CONSULTANT detailing the nature of such failure. The City Manager may terminate this Agreement without cause by giving one-year prior written notice thereof to CONSULTANT.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services, in whole or in part, in the event of a material breach of CITY's obligations to CONSULTANT under this Agreement, which breach is not cured by CITY (i) with respect to material breach of CITY's payment obligations herein, within thirty (30) days of receipt of written notice from CONSULTANT to CITY, or (ii) with respect to material breach of all other CITY obligations hereunder, within sixty (60) days of receipt of written notice from CONSULTANT to CITY detailing the nature of such breach. CONSULTANT may terminate this Agreement without cause by giving one-year prior written notice thereof to CITY.

19.3. In the event of any suspension or termination hereunder, CITY shall pay CONSULTANT for the Services rendered and materials delivered to CITY (i) on or before the effective date of such suspension or termination and (ii) in accordance with this Agreement. CITY shall pay such amounts to CONSULTANT within thirty (30) days after receipt of CONSULTANT's invoice. To the extent that CITY has prepaid any fees, CONSULTANT shall fund to CITY any prepaid fees on a pro-rata basis to the extent such fees are attributable to the period after the termination date, and CITY shall have no obligation to pay unpaid fees that would have become due during the remaining Term had this Agreement not been terminated.

19.4 The following Sections shall survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.3, this 19.4, 20, 25, and 27.

SECTION 20. NOTICES. Any notice provided for in this Agreement shall be in writing and shall be either (i) personally delivered, (ii) received by certified mail, return receipt requested, or (iii) sent by reputable overnight courier service (charges prepaid) to the recipient at the address indicated below.

To CITY: City of Palo Alto, City Manager's Office
250 Hamilton Ave., Palo Alto, CA 94301

With a copy also to the CITY's Project Manager.

To CONSULTANT: Attention of the project director at the address of CONSULTANT recited above.

Notices will be deemed to have been given hereunder (i) when delivered personally to the recipient, (ii) one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid) or (iii) five (5) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid.

SECTION 21. CONFLICT OF INTEREST

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it shall not employ subcontractors or other persons or entities having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision shall be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. CITY agrees and acknowledges that, as of the date of hereof, CONSULTANT is not a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, and that therefore CONSULTANT shall not be required to file the financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Department (and copies of which have been provided to CONSULTANT by CITY), incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

- (a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's project manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office, and a copy of the current policy has been provided to CONSULTANT by CITY.
- (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.

CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the CITY, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.30 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 25. NON-APPROPRIATION. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement shall terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS. The Services are not subject to prevailing wages. CONSULTANT is not required to pay prevailing wages in the performance of the Services in accordance with applicable law including without limitation SB 7.

SECTION 27. MISCELLANEOUS PROVISIONS.

27.1. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions.

27.2. In the event that an action is brought, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

27.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

27.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

27.5. The covenants, terms, conditions and provisions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

27.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto shall remain in full force and effect.

27.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and shall be deemed to be a part of this Agreement.

27.8. In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT's proposal (if any), this Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT's proposal, the exhibits shall control.

27.9. If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident ("Personal Information"), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform CITY as soon as practicable, but no later than 24 hours after learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without CITY's express written consent.

27.10. All unchecked boxes do not apply to this Agreement.

27.11. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

27.12. This Agreement may be signed in multiple counterparts, which, when executed and delivered by the parties hereto, shall together constitute a single binding agreement. This Agreement may be signed using the City's DocuSign platform.

[signature page follows]

CONTRACT No. C19174493 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO



City Manager

PETS IN NEED

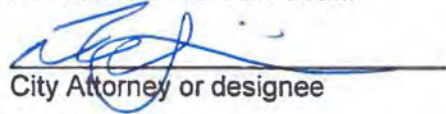
Officer 1

By: 

Name: ROBERT F. KALMAN

Title: PRESIDENT, BOARD OF DIRECTORS

APPROVED AS TO FORM:



City Attorney or designee

Officer 2

By: 

Name: ET DOLLIN

Title: Executive Director

Attachments:

EXHIBIT "A":	SCOPE OF SERVICES
EXHIBIT "B":	COMPENSATION
EXHIBIT "C":	INSURANCE REQUIREMENTS
EXHIBIT "D":	USE OF PREMISES

EXHIBIT "A"

SCOPE OF SERVICES

PETS IN NEED ("CONSULTANT") agrees to provide Animal Shelter Services as described in Section II below at the Palo Alto Animal Shelter, 3281 East Bayshore Road, Palo Alto, CA, for the City of Palo Alto ("CITY") and the Contract Cities. CITY agrees to perform the obligations as described in Section III below.

I. DEFINITIONS The following terms as used in this Exhibit "A" Scope of Services shall have the meaning provided below:

- A. "Diseased and crippled animal" means those animals which are known or believed to be infected with any dangerous or communicable disease, or which have an incurable, crippled condition or which are afflicted with any painful disease which is believed to be incurable.
- B. "Dangerous animal" means any dog or other animal which demonstrates a propensity to assault, bite, scratch or harass people or other animals without provocation. There shall be a rebuttable presumption that any animal that bites a person is a dangerous animal.

Capitalized terms used but undefined herein shall have the meanings set forth in the Agreement for Professional Services (this "Agreement") to which this Exhibit is attached and of which it forms a part.

II. PETS IN NEED RESPONSIBILITIES:

- 1. Animal Shelter Services. CONSULTANT shall perform the following sheltering services and shall provide shelter supplies, animal attendants, supervisors and administrative personnel, and any other personnel, supplies and equipment, reasonably required to perform the following services ("Shelter Services"):
 - a) Shelter of abandoned, surrendered, impounded, lost or stray domestic animals brought to the shelter by CITY or its Contract Cities, its residents, or personnel.
 - b) CONSULTANT may shelter and provide services to animals outside the scope of paragraph (a) above ("non-City animals") including moving animals between the Palo Alto Animal Shelter and Pets In Need Redwood City facility on a space-available basis and at CONSULTANT's sole expense for all costs, including labor, equipment, supplies, food, and medication. At no time shall animals within the scope of paragraph (a) above be denied services due to services provided to non-City animals at the Pets in Need Palo Alto Animal Shelter.
 - c) For the avoidance of doubt, to the maximum extent

permissible by law, CONSULTANT shall have exclusive discretion over how long an animal is sheltered, including exclusive discretion to shelter an animal for a longer period than the statutory minimum number of days. This section shall not be interpreted to authorize funds in addition to those specified in this Agreement, and CONSULTANT shall be responsible for managing the length of animal sheltering within the funds and resources authorized by this Agreement.

- d) Quarantine of biting animals.
- e) Rabies testing of suspect animals.
- f) Provision for reclaim of abandoned, lost or stray domestic animals during established business hours.
- g) Shelter staff shall make every effort to identify lost animals (through ID tags and microchips) and to contact owners.
- h) Be CITY's and Contract Cities' main point of contact (by phone, in-person, and electronic means) regarding animal shelter services, including inquiries regarding missing pets.
- i) Provide medical evaluation and treatment, if necessary, to all incoming animals. This includes vaccinations, and spay and neuter surgeries to domestic animals.
- j) Euthanasia and disposal of abandoned, lost, impounded, or stray domestic animals that are unclaimed by their owners and found to be diseased and crippled and/or dangerous as defined by Palo Alto Municipal Code and California State Law.
- k) For purposes of clarity, CONSULTANT shall not be required to provide owner-requested euthanasia at any time, and CITY acknowledges that CONSULTANT has elected not to provide or subcontract this service.
- l) CONSULTANT shall maintain a public website, separate from the CITY's website, with information including without limitation: shelter hours, volunteer opportunities, adoption information, medical services offered and information about those services and contact information.
- m) Consultant shall allow CITY Animal Control Officers access to the shelter at all times for purposes of dropping off animals and provide reasonable accommodation for Animal Control Officers to begin and end their shifts, and complete administrative work in the shelter.
- n) CONSULTANT shall maintain, repair and replace all surgical room equipment, cages, hoses, and other equipment at the facility.
- o) CONSULTANT shall comply with all federal, state, and local laws in effect applicable to the Services upon commencement of the provision of the Services, and shall be subject to inspection by the CITY and other duly authorized federal, state, and local authorities to insure

such compliance. This includes the applicable provisions of Palo Alto Municipal Code Title 6, as amended from time to time. For the avoidance of doubt, this provision shall not be construed to expand the scope of the Services as expressly set forth in this Exhibit "A".

- p) CONSULTANT shall use commercially reasonable efforts to offer comprehensive volunteer and educational programs which may include, without limitation: animal fostering programs, dog walker programs, and animal care trainings.
- q) When appropriate, in CONSULTANT'S sole discretion, CONSULTANT may partner and/or coordinate with adoption programs, rescue groups, and other no-kill shelters to maximize the shelter's adoption rate and/or place animals in suitable foster care. CONSULTANT shall seek CITY's approval for partnerships in which CONSULTANT pays or receives money or other financial consideration, solely to the extent that such partnership relates to CONSULTANT's performance of the Services. CITY shall approve or deny in writing any such request within thirty (30) days after receipt of such request.
- r) Develop and maintain communication with CITY by:
 - 1. Responding in a timely manner to emails and phone calls.
 - 2. Communicating and resolving issues and concerns promptly.
- s) Develop, in cooperation with CITY, a feral cat plan. The plan shall include how PIN handles feral cats, spay/neuter provisions, and release of feral cats. CONSULTANT shall not release feral cats within the City of Palo Alto or any of its Partner Cities.
- t) Develop, in cooperation with CITY, a disaster preparedness plan.

2. Medical Services

- a) CONSULTANT shall provide supplies, and professional and trained personnel, employed or under subcontract or contract, necessary to perform the following services ("Medical Services"): Provision of veterinarian services twenty-four (24) hours per day to treat and provide veterinarian care for impounded animals, including for animals picked-up by Animal Control Officers. CONSULTANT may, in its sole discretion and at its sole expense, arrange after-hours emergency care through any veterinary subcontractor.
- b) Monitor quarantined animals.
- c) For a fee, conduct vaccination clinics and have available, free of charge to the public, rabies control information.
- d) Conduct microchipping.
- e) For a fee, which shall be posted on CONSULTANT's website,

at the same rate established for City residents and Contract Cities, provide access to the CONSULTANT's low cost spay and neuter clinic.

- f) The City's Animal Control Officers shall be licensed through CONSULTANT'S medical authority to administer euthanasia as necessary for animals that are unclaimed by their owners and found to be diseased and crippled and/or dangerous as defined by Palo Alto Municipal Code.
 - g) Comply with all laws requiring reporting of animal-borne diseases, including rabies. This includes Municipal Code section 6.32.020, as amended from time to time.
3. Operating Schedules
- a) CONSULTANT shall provide Shelter Services for the animals twenty-four (24) hours a day, seven (7) days a week.
 - b) CONSULTANT shall provide emergency veterinary services in accordance with Section 597(f) of the California Penal Code.
 - c) CONSULTANT shall have shelter staff on site for care of shelter animals seven (7) days per week, 365 days per year.
 - d) CONSULTANT shall have business offices and public access areas of shelter to be open to the public on a schedule designed to benefit the public and facilitate the services established in this Agreement, provided that the public hours and access be a minimum of six (6) days per week and forty (40) hours per week. CONSULTANT shall post the public hours on its website, and inform CITY and Contract Cities in writing of any change in hours.
 - e) CITY acknowledges and agrees that, until the renovations described in Exhibit D are completed, CONSULTANT may be unable to be fully staffed and operational in accordance with this Paragraph 3, and may request to operate at a reduced schedule at its reasonable discretion. Consultant's project manager shall make any such request to City's project manager, whose consent shall not be unreasonably denied, delayed, or conditioned.
 - f) CONSULTANT shall observe the following holiday closures for public hours:

January 1 (New Year's Day)
Martin Luther King's birthday
Memorial Day
July 4th (Independence Day)
Labor Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve (1/2 Day)
Christmas Day

4. Dead Animal Services
- a) CONSULTANT shall provide storage facilities, disposal

mechanisms, administrative personnel, and any other personnel, supplies and equipment reasonably required to perform the following services ("Dead Animal Services"):

- i. Identification of and notification to the owner of the dead animal, whenever possible; and
 - ii. Disposal of the body of the dead animal. CONSULTANT shall offer animal owners the option to pay for cremation services, in which case, CONSULTANT shall arrange for cremation with the appropriate subcontractor.
- b) CONSULTANT shall subcontract with one or more subcontractors for the maintenance of a dead animal storage facility as well as collection of dead animals and maintenance of the facility and equipment, all at CONSULTANT's sole expense.

5. Wildlife

- a) The impoundment of wildlife shall be managed by CONSULTANT staff. An assessment of wildlife shall be done by medical staff, if necessary. If the animal is severely injured or sick, a licensed veterinarian shall be consulted, and the case shall be fully documented in accordance with AVMA guidelines. This Agreement assumes that all wildlife animals will continue to be transferred to the Peninsula Humane Society at no cost to the CITY or to CONSULTANT, as set forth in the Memorandum of Understanding between CONSULTANT and Peninsula Humane Society dated November 17, 2017. Should Peninsula Humane Society request fees for wildlife intake, CONSULTANT and the CITY shall negotiate in good faith to amend this Agreement per Section 27.4 herein, to provide for the reimbursement by CITY to CONSULTANT of such fees (upon documentation of such fees by CONSULTANT reasonably satisfactory to CITY).

6. Records Management

- a) CONSULTANT and CITY's Animal Control shall maintain joint access to the Chameleon database, as provided for in this section. CONSULTANT is responsible for keeping the Chameleon database updated in a timely fashion. Chameleon data is designated "For Official Use Only," meaning, CONSULTANT may only use such data for the performance of this Agreement, and not for marketing or any other purposes without the prior written consent of the CITY's City Manager or designee. Annual maintenance fees for the Chameleon software shall be paid by CITY. Repair and replacement cost of the server and supporting hardware, if any, shall also be paid by CITY. CONSULTANT shall not have access to certain areas of the database, such as saved criminal information (as required by law). CITY shall work with the database programmer/vendor to ensure that such areas of the

database are not accessible by CONSULTANT. All data entered into the Chameleon database by any party shall be property of CITY.

b) Monthly Report

- i. CONSULTANT shall deliver to CITY during the term of this AGREEMENT, and within thirty (30) days of the end of each month, a monthly Animal Shelter and Impound Report summarizing monthly and year-to-date services provided by CONSULTANT for CITY. This report shall include, but not be limited to, the following information:
 - (1) Licensing statistics
 - (2) Medical statistics including spay and neuter, microchips, and vaccinations
 - (3) Volume of animals in and out of facility by type of animal and type of outcome.
 - (4) For each animal, which city in which it was picked up (if known).

c) Financial Reporting

- i. CONSULTANT shall deliver to CITY during the term of this Agreement, and within ninety (90) days of the end of each May, an audited financial report covering CONSULTANT's operation of the Palo Alto Animal Shelter.

d) Retention of Records, Right to Monitor and Audit

- i. CONSULTANT shall maintain records relating to CONSULTANT's operation of the Palo Alto Animal Shelter for a period of four (4) years after the expiration or termination of this Agreement or until any audits or reviews are completed, whichever comes later, and such records shall be subject to examination and/or audit of CITY, a Federal grantor agency, and the State of California for a period of four (4) years after the expiration or termination of this Agreement or until any audits or reviews are completed, whichever comes later.
- ii. Records/accounts relating to CONSULTANT's operation of the Palo Alto Animal Shelter shall be open and accessible to inspection upon reasonable notice during normal business hours throughout the term of this Agreement and for a period of four (4) years thereafter or until any audits or reviews are completed, whichever comes later.
- iii. Parties, upon request by either party to the other, shall meet on occasion to consider revisions which may be needed to the reporting forms created to document performance of the Services provided.

7. Fundraising, Marketing and Branding

- a) CONSULTANT shall create and manage fundraising, marketing, volunteer development and education programs. Local volunteer

groups shall be integrated into fundraising and other activities and events when reasonably possible. The "Pets In Need Palo Alto Animal Shelter" shall be the initial brand name of the shelter to be operated by CONSULTANT pursuant to this Agreement, and any logo or name change shall be approved in writing by CONSULTANT and the CITY's City Manager or designee prior to use.

8. Licensing and other fee collection
 - a) CONSULTANT shall charge fees for services according to the CITY's municipal fee schedule or according to state or local laws. Fees for any services not covered by CITY's municipal fee schedule or state or local laws shall be set by CONSULTANT. CONSULTANT shall take CITY's comments into consideration when setting such fees. CITY shall take CONSULTANT's comments into consideration when setting its municipal fee schedule.
 - b) CONSULTANT shall manage dog licensing including processing, issuance, and renewals on behalf of CITY and Contract Cities. Licensing information shall be included on all Incident Reports and, additionally, provided to CITY on an as requested basis. CONSULTANT shall collect all associated license fees on behalf of CITY, at the fee amounts set by CITY. Licensing includes the licensing of dogs as defined in Municipal Code Chapter 6.16 as amended from time to time.
 - c) CONSULTANT shall process citation fees, and shall remit 100% of these fees to the CITY on a quarterly basis. PETS IN NEED shall process and retain all other fees and revenues, including without limitation adoption fees, spay, neuter, impoundment, permit, license, and other fees as listed in the municipal fee schedule.
9. Contract Cities; WeCare Alliance
 - a) CITY and CONSULTANT shall provide services to the City of Los Altos and the Town of Los Altos Hills (the "Contract Cities") pursuant to the CITY's amended Regional Animal Care and Control contracts approved by City Council on June 2, 2014. These contracts are valid through June 30, 2019 with an option for an additional five-year extension. The Parties agree that this Agreement assumes that the Contract Cities' contracts will be in effect during the entire term of this Agreement.
 - b) CITY shall consult with CONSULTANT should the contracts with the Contract Cities be amended or terminated, provided that if any such amendment or termination is reasonably expected to result in increased costs to CONSULTANT, such amendment or termination (if initiated by CITY) shall be subject to

CONSULTANT's prior written consent. CONSULTANT shall notify CITY in writing of its consent or lack thereof within forty-five (45) days after receipt of CITY's written request, which request shall include the precise language of such amendment or all relevant details of such termination (whichever applies). If CONSULTANT consents, the parties shall amend this Agreement (i) to adjust the scope of Services accordingly and (ii) to cover any reasonable cost increases to CONSULTANT.

- c) CITY may contract with additional cities, subject to CONSULTANT's prior written consent. CONSULTANT shall notify CITY in writing of its consent or lack thereof within forty-five (45) days after receipt of CITY's written request, which request shall include the text of such proposed contracts. If CONSULTANT consents, CONSULTANT and CITY shall amend this Agreement (i) to adjust the scope of Services accordingly and (ii) to cover any reasonable cost increases to CONSULTANT.
- d) CONSULTANT shall continue membership in the WeCare Alliance (www.sheltersfirst.org).

10. Cost Overruns or Changes

- a) If CITY or state laws are passed during the term of this Agreement that require a greater level of service, CITY and CONSULTANT agree to negotiate in good faith regarding the reimbursement of CONSULTANT for additional costs associated with implementing the new laws. If Parties are unable to agree on reimbursement costs, CONSULTANT shall document the increased costs and submit to the City Auditor. The City Auditor shall conduct an independent audit. Parties agree to accept the City Auditor's determination of any increased costs.
- b) If current state laws are amended, repealed, otherwise changed or suspended during the term of this Agreement that reduce, alter, or remove existing relevant mandates, either party may require the other party to meet to discuss possible financial and operational impacts of levels of service per the change in law, including but not limited to any decrease in contract amounts paid to CONSULTANT, provided that no such decrease shall be effective unless agreed by CONSULTANT.

III. CITY RESPONSIBILITIES. CITY shall:

- 1. Provide an adequate and safe facility for CONSULTANT to perform the Services.
- 2. Provide Animal Control Officers (ACOs) and their services for CITY and Contract Cities. This shall include maintenance of ACO vehicles

and equipment. Establish fees for dog licensing and animal impounding.

3. With regard to the shelter facility, provide and/or pay for utilities, taxes, electricity, water, gas, waste water, recycling, waste (not animal disposal), internet, Chameleon software/database and associated support, and Chameleon server hardware and support (if any), which collectively is estimated to cost approximately \$55,000 per year.
4. Develop and maintain proactive and consistent communication and rapport with CONSULTANT
 - a) Respond in a timely manner to emails and phone calls
 - b) Communicate and resolve issues and concerns immediately
 - c) Provide excellent customer service to CONSULTANT staff and customers
5. Develop, in cooperation with CONSULTANT, a disaster preparedness plan
6. Administer the agreements between the CITY and the Contract Cities regarding animal shelter services.

EXHIBIT "B"
COMPENSATION

CITY agrees to compensate CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement, and as set forth in the schedule below.

SCHEDULE	TO EQUAL AND NOT TO EXCEED (SUBJECT TO SECTION 19 "TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES")
Year 1	\$708,000.00
Year 2	\$663,000.00
Year 3	\$676,260.00
Year 4	\$689,785.20
Year 5	\$703,580.90
Sub-total Basic Services	\$3,440,626.10
Reimbursable Expenses	\$0.00
Total Basic Services and Reimbursable expenses	\$3,440,626.10
Contingency Funds	\$200,000.00 (not to exceed \$40,000 per year)
Additional Compensation for Renovation Delays	\$60,000.00 (not to exceed \$5,000 per month; see Exhibit D, Section 15.7)
Maximum Total Compensation	\$3,700,626.10

ONE-TIME ADVANCE

Simultaneous with the execution of this Agreement, CITY shall pay to CONSULTANT One Hundred Seventy Eight Thousand dollars (**\$178,000**) as an advance against the first three months of CONSULTANT's fee. CONSULTANT shall not submit an invoice for the remainder of its fee for the third month until the end of such third month.

CONTINGENCY FUNDS

CITY shall provide contingency funds to CONSULTANT in the following circumstances, subject to written approval by the CITY's project manager, and to equal and not to exceed the amount in this Exhibit C:

1. CITY shall provide contingency funds for after-hours and emergency veterinary care if:
 - a. CONSULTANT has already spent at least \$10,000 in the past 12 months on a rolling basis on after-hours or emergency veterinary care that was reasonable based on AVMA guidelines; and
 - b. The emergency or after hours treatment being sought is reasonable based

- on AVMA guidelines.
2. CITY shall provide contingency funds for hoarding cases if:
 - a. CONSULTANT has already served more than 600 animals from the CITY or the Contract Cities in the past 12 months; and
 - b. The hoarding case involves a minimum of 12 animals brought at once that are expected to stay in the facility for at least 30 days each.
 3. CITY shall provide contingency funds for the actual costs of wildlife intake at the Peninsula Humane Society if:
 - a. The Peninsula Humane Society begins charging for the costs of wildlife services; and,
 - b. This Agreement has not yet been amended to reflect the additional costs of such services.
 4. CONSULTANT may also request contingency funds in other unforeseen circumstances.

To request contingency funds, the CONSULTANT shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, for such services. In addition to the factors above, CITY may consider whether contingency funds are appropriate within existing funding and workload, and contingency funds shall not be released if CONSULTANT has not exhausted unused or unallocated funds.

The CITY shall notify CONSULTANT in writing of its approval or lack thereof within ten (10) days after the date of CONSULTANT's proposal. If CITY's project manager does not approve CONSULTANT's request, CONSULTANT may appeal that decision to the City Manager.

If authorized by CITY, the contingency services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's project manager and CONSULTANT, and payment shall be made to CONSULTANT, no later than ten (10) days after the date of CITY's authorization. Contingency funds are subject to all requirements and restrictions in this Agreement.

ADDITIONAL COMPENSATION FOR RENOVATION DELAYS

The City shall pay Consultant up to \$5,000 monthly for up to twelve consecutive months pursuant to the terms of Exhibit D, Section 15.7 ("Additional Compensation for Renovation Delays") of this Agreement.

REIMBURSABLE EXPENSES

No Reimbursable Expenses are authorized by CITY through this Agreement, unless pursuant to a written amendment to this Agreement as provided for herein.

ADDITIONAL SERVICES

No Additional Services are authorized by the CITY through this Agreement, unless pursuant to a written amendment to this Agreement as provided for herein.

EXHIBIT "C"
INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$5,000,000	\$5,000,000
		PROPERTY DAMAGE	\$5,000,000	\$5,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROPERTY INSURANCE	ALL RISK, FULL REPLACEMENT INSURANCE VALUE		
YES INSURANCE	BUSINESS INTERRUPTION			
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$2,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONTRACTORS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED

UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF CONSULTANT UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

II. INSURANCE COVERAGE MUST INCLUDE:

1. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
2. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONSULTANT'S AGREEMENT TO INDEMNIFY CITY.
3. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.

Vendors are required to file their evidence of insurance and any other related notices with the City of Palo Alto at the following URL:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>

OR

http://www.cityofpaloalto.org/gov/depts/asd/planet_bids_how_to.asp

EXHIBIT D USE OF PREMISES

SECTION 1. USE OF PREMISES. Consultant shall have the exclusive right to enter and use the Premises during the term of this Agreement for the sole purposes of performing the Services and fulfilling Consultant's obligations under the Agreement, as detailed in this Section 1 ("Use of Premises") of this Exhibit D. Consultant shall have the right to permit Consultant's employees, agents and subcontractors to enter and access the Premises for the sole purposes of performing the Services and fulfilling Consultant's obligations under this Agreement. Consultant shall have the right to exclude third parties and trespassers onto the Premises. Notwithstanding the foregoing, City's Animal Control Officers and their supervisors have the right to enter the Premises at any time. In addition, City has the right to enter Premises at any time for the purposes of inspection, emergency response and the performance of City obligations under this Agreement. Consultant shall, at City's request, promptly remove any of Consultant's property or Consultant-installed improvements on the Premises to allow City access to the utilities or other City owned facilities/property. In the event City deems it necessary, for purposes of health, safety or building code requirements, in City's sole discretion, City shall have the right to move, alter or remove any such property or improvements and City shall be responsible for promptly restoring or returning the same to its prior condition.

SECTION 2. CONDITION OF PREMISES, CLEANING AND MAINTENANCE.

2.1 Condition of Premises, Routine Interior Cleaning and Janitorial Activities. In connection with its use, Consultant shall maintain the Premises in a clean, safe, secure, orderly, and sanitary condition, consistent with a commercially reasonable standard for a well-run animal shelter facility, so far as the Premises may be affected by Consultant's activities under this Agreement. Specifically, Consultant shall undertake routine cleaning and janitorial activities as necessary to maintain the interior of the Premises in an orderly condition, as above, provided that nothing in this section shall obligate Consultant to make any alterations or capital improvements to the Premises. Consultant shall maintain all of its own equipment, furnishings and trade fixtures upon the Premises which are required for the maintenance and operation of the Palo Alto Animal Shelter.

2.2 Maintenance and Utilities. Outside of Consultant's responsibilities for routine interior cleaning and janitorial activities in Section 2.1 of this Exhibit, City shall be responsible for the maintenance of the interior and exterior of the Premises and the surrounding grounds, including (without limitation) the maintenance, repair, and replacement of the roof, building structure, improvements, and the HVAC, electrical, plumbing, and other building systems. City shall perform any alterations to the Premises (1) required by applicable laws or laws of general application (i.e. ADA, seismic regulations, and building codes) and (2) to ensure that utilities (including, without limitation, water, gas, and electricity) are available to the Premises, in amounts sufficient for Consultant to perform the Services. In the event of a utilities outage, the City will work diligently to restore availability as quickly as possible. City shall promptly perform its obligations under this Section 2.2 ("Maintenance and Utilities"). In the event of a maintenance issue that impacts the health and safety of the operations, the City shall respond within 24 hours of receipt of notice from Consultant to develop an action plan to address the issue in an expedited timeframe.

SECTION 3. HAZARDOUS MATERIALS.

3.1 Environmental Laws. "Environmental Laws" means any applicable federal, state or local laws and regulations relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or adjacent to the Premises, including without limitation soil, air and groundwater conditions.

3.2 Hazardous Materials. "Hazardous Materials" means any substance, material, waste, pollutant or contaminant which is regulated by applicable Environmental Laws as being hazardous, toxic, flammable, carcinogenic, explosive or radioactive, or is potentially injurious to the public health, safety or welfare or the environment.

3.3 Release. "Release," when used with respect to Hazardous Materials, means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, or disposing on, in, under or adjacent to the Premises, or any improvements constructed hereunder by or on behalf of the Consultant, or in, on, under or adjacent to the Premises or any portion thereof in violation of Environmental Laws.

3.4 Remediation. "Remediation" (and derivatives thereof such as an without limitation "remediate"), when used with reference to Hazardous Materials, means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on or under or adjacent to the Premises, or which have been or are being, or risk of being Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323, and as may be amended from time to time.

3.5 No Hazardous Materials. Consultant covenants and agrees that Consultant shall not, nor shall Consultant permit any of Consultant's officers, employees, agents, or subcontractors, to cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated, deposited or disposed of in, on, under or adjacent to the Premises in violation of Environmental Laws, provided that Consultant may store and use such substances in and on the Premises in such limited amounts as are customarily used in the operation of an animal shelter such as the Premises so long as such storage and use is at all times in full compliance with all applicable Environmental Laws and permits. Consultant shall notify the City as soon as possible within 24 hours if and when it learns or has reason to believe that there has been any Release of Hazardous Material in, on, under or adjacent to the Premises. The City may request Consultant to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Consultant shall promptly provide all such information. In the event that any Hazardous Material is Released in, on, under or adjacent to the Premises by Consultant or any of Consultant's officers, agents, employees, or subcontractors, Consultant shall promptly undertake all necessary actions to Remediate the contaminating Hazardous Material from the Premises and to return the Premises and other City property affected thereby, to the condition existing prior to such Release, or its reasonable equivalent or better, and otherwise investigate and Remediate the Release in accordance with applicable Environmental Laws, at no cost to City. Notwithstanding the foregoing, and excluding Consultant's notice obligations under this Section, Consultant shall have no Remediation obligations under this Section for (i) the mere discovery of any preexisting condition, or (ii) any conditions arising out of any action or inaction of City, its Council members, officers, employees, agents or subcontractors, and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors, (iii) any conditions arising out of any action or inaction of third party vendors that are not an agent or subcontractor of Consultant, and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors, (iv) any conditions arising out of any action or inaction of a third party, not an agent or subcontractor of Consultant, and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors.

3.6 Hazardous Material Indemnity. Consultant shall, on behalf of itself and its successors and assigns, indemnify, defend and hold harmless City, its Council members, officers, employees and agents (each a "City Indemnified Party") from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses (including, without limitation, diminution in value of the Premise, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premise,

damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, reasonable attorneys' fees, reasonable expert fees, judgments, administrative rulings or orders, fines, penalties, costs of death of or injury), to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or adjacent to the Premises by Consultant, or Consultant's officers, employees, agents or subcontractors, of Hazardous Material, or by any such party's failure to comply with any applicable Environmental Law, whether knowingly or by strict liability. Such Consultant indemnity obligations include, without limitation, and whether foreseeable or unforeseeable, all costs of any Hazardous Materials management plan, closure, investigation, repairs, and Remediation and restoration of the Premises to its prior condition. For purposes of such indemnity obligations, any acts or omissions of Consultant, its officers, employees, agents, or subcontractors (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Consultant. Consultant shall provide the City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, Remediation or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving a Release of Hazardous Materials in, on, under, or adjacent to the Premises by Consultant or Consultant's officers, employees, agents, or subcontractors as detailed in this Section. Notwithstanding the foregoing, Consultant shall have no obligation to indemnify the City or any City Indemnified Party for (i) the mere discovery of any preexisting condition, or (ii) any conditions arising out of any action or inaction of City, its Council members, officers, employees, agents or subcontractors and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors, (iii) any conditions arising out of any action or inaction of third party vendors that are not an agent or subcontractor of Consultant, and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors, (iv) any conditions arising out of any action or inaction of a third party, not an agent or subcontractor of Consultant, and not contributed to by any action or inaction of Consultant or Consultant's officers, employees, agents, or subcontractors.

SECTION 4. DAMAGE TO UTILITIES. Consultant shall exercise reasonable care to not do anything in, on, under or adjacent to the Premises that damages any City utilities (e.g. gas, water, wastewater, fiber, electric) located in, on, under or about the Premises. Consultant agrees to reimburse City within thirty (30) calendar days of City's written request for any damages caused to City owned utilities caused by a failure of PIN to exercise reasonable care the Premises.

SECTION 5. [RESERVED BY AGREEMENT OF THE PARTIES]

SECTION 6. SURRENDER; DUTIES UPON TERMINATION OR EXPIRATION. Upon the expiration or earlier termination of this Agreement, Consultant shall immediately surrender the Premises in the same condition as received upon completion of the improvements detailed in this Agreement and any other improvements completed by City during the term of this Agreement (excepting reasonable wear and tear; casualty not caused or contributed to by Consultant or its officials, employees, agents or subcontractors; or condemnation not caused or contributed to by Consultant or its employees, agents or subcontractors), broom cleaned, walk-through with City staff completed, and free from hazards that are not pre-existing and were not introduced by the City or its officials employees, agents or subcontractors and clear of all debris that is not pre-existing and was not introduced by the City or its officials, employees, agents or subcontractors. At such time, Consultant shall remove all of its property from the Premises hereunder, and shall repair, at its cost, any damage to the Premises caused by such removal. Consultant's obligations under this Section shall survive any termination of this Agreement. Consultant shall deliver to the City the originals of all books, permits, plans, records, licenses, contracts, and other documents pertaining to the Premises and its operation, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other records or documents pertaining to the Premise, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership and operation of the Premise, which are in the Consultant's possession. Consultant shall also deliver to City all keys, alarm codes, passwords, and other items used to secure the Premise.

Consultant further agrees to do all other reasonable things reasonably necessary to cause an orderly transition of the management and operation of the Premises. The provisions of this Section shall survive the expiration or earlier termination of this Agreement until the obligations of the Consultant under this Section are fulfilled to the reasonable satisfaction of the City.

SECTION 7. REPAIR OF DAMAGE. If any portion of the Premises or any property of City located in, on, under or adjacent to the Premises is damaged or at risk of damage by any of the activities conducted by Consultant or anyone acting by or through Consultant, Consultant shall immediately notify City in writing of such damage or risk of damage. City may remedy, but shall not be obligated to remedy, such damage or risk of damage at Consultant's sole cost, or City may elect to witness Consultant's repair work. In the event City elects not to remedy such damage or threat, Consultant shall repair any and all such damage and restore the Premises or such property to its previous condition subject to City's inspection, review and approval.

SECTION 8. CITY'S RIGHT TO CURE DEFAULTS BY CONSULTANT. If Consultant fails to perform any of its obligations under this Exhibit D to restore the Premise, remove or alter improvements or repair damage, or if Consultant defaults in the performance of any of its other obligations under this Exhibit D within a reasonable time after demand by City, then City may, at its sole option, remedy such failure at Consultant's expense; within ten (10) days of receipt of a bill, Consultant shall promptly reimburse the City's actual reasonable costs (including without limitation all costs, damages, expenses or liabilities incurred by City, reasonable attorneys', experts' and Consultants' fees) in remedying or attempting to remedy such failure, or City may reduce any outstanding amount due to Consultant under the Agreement by the cost to City of such remedial action. In the alternative, the cost thereof may be made a lien on Consultant's property as provided in section 12.12.010 of the Palo Alto Municipal Code. Any such remedial action by City shall not be construed as a waiver of any rights or remedies of City under this Exhibit D or the Agreement, and nothing herein shall imply any duty of City to do any act that Consultant is obligated to perform. Consultant's obligations under this Section shall survive the expiration or earlier termination of this Exhibit D.

SECTION 9. GENERAL PROVISIONS. (a) If Consultant consists of more than one person, the obligations of each person shall be joint and several. (b) Consultant may not record this Exhibit D or any memorandum hereof. (c) Any sale or conveyance by City of the Premises, the provisions of Section 19 ("Termination or Suspension of Agreement or Services") of this Agreement shall govern.

SECTION 10. HOLDING OVER. If Consultant remains in possession of the Premises or any part thereof after the expiration of the term of this Agreement, or any renewal option thereto, such occupancy shall be a revocable license from month to month with all the obligations of this Exhibit D applicable to Consultant. Nothing contained Exhibit D or in the Agreement shall give to Consultant the right to occupy the Premises after the expiration of the term of this Agreement, or any renewal option thereto, or upon any earlier termination.

SECTION 11. WAIVER OF CIVIL CODE. Consultant expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, to the extent applicable, which would otherwise afford Consultant the right to make repairs at City's expense or to terminate this Agreement because of City's failure to keep Premises in good order, condition and repair.

SECTION 12. ALTERATIONS BY CONSULTANT. Consultant shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager, except for alterations or improvements that cost less than Ten Thousand Dollars (\$10,000.00) and which do not affect any building systems or the structural integrity or any structural components of the Premises.

12.1 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises by Consultant must be free and clear of all liens, claims, or liability for labor or material and

shall become the property of City, at its election, upon expiration or earlier termination of the term, and shall remain upon the Premises upon expiration or earlier termination of this Agreement. Any furniture, trade fixtures installed by Consultant, equipment or other property of Consultant (whether obtained prior to or during the term of this Agreement) shall remain the property of Consultant. Consultant shall restore the Premises to the condition prior to Consultant's installation of such trade fixtures, consistent with Section 6 ("Surrender; Duties Upon Termination or Expiration"). .

12.2 Indemnity for Claims Arising Out of Construction. For the avoidance of doubt, included in Consultant's obligations under Section 16 ("Indemnity; Limitation of Liability") of the Agreement to which this is an exhibit, is Consultant's obligation to indemnify, defend and hold harmless City Indemnified Parties against all Claims arising out of construction and maintenance work performed on the Premises by Consultant or caused to be performed on the Premises by Consultant.

12.3 Certificate of Inspection. In the event Consultant will perform, or cause to be performed, any construction, improvement or alteration or any other work on or to the Premises for which City requires a certificate of completion, then upon completion of any such construction, improvement or alteration, Consultant shall submit to the City Manager a Certificate of Inspection, verifying that such construction, improvement or alteration was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction, as applicable.

12.4 As Built Plans. Consultant shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction or (ii) structural alterations.

SECTION 13. ASBESTOS NOTIFICATION. Consultant acknowledges that City has advised Consultant that the Premises contains, or because of its age, is likely to contain asbestos-containing materials ("ACMs"). If Consultant undertakes any alterations, additions, or improvements to the Premises, Consultant shall do so in a manner that avoids disturbing any ACMs present on the Premises. If ACMs are likely to be disturbed in the course of such work, Consultant shall encapsulate or remove the ACMs in accordance with an asbestos-removal plan approved by the City and otherwise in accordance with all applicable laws, including giving all notices required, if any, by California Health and Safety Code §§ 25915-25919.7, as may be amended.

SECTION 14. MATERIAL CASUALTY

14.1 Damage and Repair. If a Material Casualty (as defined herein) occurs, then the City shall determine, in its sole and absolute discretion, whether it wishes to continue to operate the Premises as an animal shelter. The City's failure to provide written notice to Consultant of such election within thirty (30) days after the occurrence of a Material Casualty or other damage or destruction of the Premises shall constitute the City's election to continue the operation of the Premises as an animal shelter. If the City elects (or is deemed to elect) to continue the operation of the Premises as an animal shelter after a Material Casualty, or if the Premises is damaged but such damage does not constitute a Material Casualty, then the City shall promptly reconstruct or repair the destroyed or damaged portion of the Premises. City shall pay all costs of repairing and reconstructing the Premises. A "Material Casualty" is a total destruction of the Premises or any damage to the Premises the repair of which would exceed the City Manager's Council-delegated contracting authority under Palo Alto Municipal Code section 2.30.210, depending on the applicable contract types in relation to the repairs required.

14.2 Termination. If City notifies Consultant in writing within thirty (30) days after the occurrence of a Material Casualty that the City elects to not continue the operation of the Premises as an animal shelter after such Material Casualty, then the Agreement shall immediately terminate as of the date such notice is delivered to Consultant. In the event of such termination, (i) City shall pay Consultant's reasonable costs in winding down the operations at the Premises, including, but not limited to, any costs

associated with the termination of employees by Consultant and (ii) Consultant shall be entitled to retain its prorated compensation amount for the quarter in which termination occurs (prorated for the number of days in such quarter that elapsed up to the date of termination).

14.3 Continuation. If the City elects (or is deemed to elect) or is obligated to reconstruct or repair the damaged portions of the Premises because such damage does not constitute a Material Casualty pursuant to Section 14.1 ("Damage and Repair"), the City and Consultant shall make a determination as to whether the Premises will continue to operate during the reconstruction/repair period. If the parties mutually determine (in their respective reasonable discretion) that the Premises will operate during such period, this Agreement shall remain in full force and effect. Otherwise, Consultant's obligations to provide animal shelter services under this Agreement shall be suspended during such period. In the event of such suspension, (i) City shall pay Consultant's reasonable costs incurred by Consultant during any such suspension of operations and (ii) Consultant shall be entitled to retain its prorated compensation amount for the quarter in which suspension occurs (prorated for the number of days in such quarter that elapsed up to the date of suspension). City shall further pay all reasonable costs incurred by Consultant due to such suspension. If the parties desire, during the suspension period, the parties may negotiate in good faith to try to provide for animal shelter services to the best of the parties' reasonable abilities under the circumstances of such a suspension.

SECTION 15. CITY IMPROVEMENTS TO PREMISES. The City has worked with Consultant to identify improvements to the Premises. The City shall improve the Premises as follows, subject to the Contingencies described in this section:

15.1 Expansion of Existing Medical Suite. The City shall expand the medical suite at the Premises to accommodate more animals and offer more privacy to customers. The remodeled medical suite shall expand into the office area for the shelter and shall offer separate entrances for medical customers, separate treatment, recovery, and preparation areas, as well as a lobby for medical customers. The expansion will not be inconsistent with the plans entitled "Floor Plan – New Medical Area" that Consultant provided to City, attached as (Exhibit D-1), to the extent practicable and feasible based on site requirements and architectural- or engineering-based considerations. The City shall abate asbestos and lead paint within the medical suite area of the Premises.

Expected Timeline:

Design and Review Timelines:

A/E Consultant Procurement: November 8 – December 30, 2018

Schematic Design / Design Development: January 2, 2019 – February 25, 2019

Construction Documents: February 28 – March 22, 2019

Building Permit: April 4 – May 5, 2019

Procurement and Construction Timelines:

General Contract Bidding/Procurement: April 25 – July 7, 2019

Construction: July 24 – November 14, 2019

Note: During construction, the building will be closed, and staff will need alternative worksites. All other parts of the building should still be open.

15.2 Addition of New Modular Building. The City shall place a modular building on the site to supplement the existing building. The building shall be used for offices as well as for meetings and educational programs for the public. The modular building shall be connected to utilities and will likely require a concrete pad. The modular building will not be inconsistent with Exhibit D-2, to the extent practicable and feasible based on site requirements and architectural- or engineering-based considerations. The City will place one (1) construction-type trailer within sixty (60) days as temporary accommodations until the modular building is installed and operational.

Expected Timeline:

Design and Review Timelines:

Design: November 8, 2018 – February 25, 2019

ARB Review: January 10, 2019 – February 8, 2019

Building Permit (concurrent): January 11, 2019 – May 4, 2019

Procurement and Construction Timelines:

Procurement (9 steps): February 28 – May 12, 2019

Construction (4 major steps): May 1, 2019 – July 28, 2019

15.3 Renovation of Existing Dog Kennels. The City shall renovate the existing dog kennels located at the Premises to ensure that all kennels are operable and expected that this work shall be done by March 15, 2019. The renovation shall be as described in Exhibit D-3, to the extent practicable and feasible based on site requirements and architectural- or engineering-based considerations.

15.4 Construction of New Dog Kennels. The City shall construct 16 new kennels on the Premises. Construction is expected to be complete by July 30, 2020. The new kennels will be constructed of galvanized steel, will be air-conditioned and heated, and located as close as possible to the existing dog kennels and medical area, to the extent practicable and feasible based on site requirements and architectural- or engineering-based considerations. Interior and exterior runs shall be of material size and quality not inconsistent with the applicable items as set forth on Exhibit D-4, to the extent practicable and feasible based on site requirements, architectural- or engineering-based considerations, and procurement requirements applicable to the City as a public entity.

15.5 Total Cost. The total cost of these improvements above is expected to be approximately \$3.4 million, not including staff time, as estimated at the time as of the execution of this Agreement, and shall be fully paid for by the City of Palo Alto.

15.6 Contingencies. The Parties acknowledge that the improvements in this Section are subject to conditions which may alter the scope of the aforementioned improvements and could prevent one, some, or all of them from being constructed. These conditions include, but are not limited to:

- (a) Permitting and architectural review;
- (b) Appropriation of sufficient funds, as decided by the City Council;
- (c) Compliance with all laws, regulations, permits, and conditions, including CEQA; and
- (d) Changes in the prices for construction and materials.

15.7 Additional Compensation for Renovation Delays. Due to facility inadequacies, that would be remedied by the completion of the renovations outlined in sections 15.1, 15.2, and 15.3, the City will provide additional compensation to Consultant up to five-thousand dollars (\$5,000) per month, should the City be unable to substantially complete the renovations in the time periods outlined in sections 15.1, 15.2, and 15.3. The additional compensation must be specifically documented and related to costs Consultant incurs as a result of facility inadequacies that would be remedied by the completion of renovations.

15.8 All work performed by the City shall be performed in a workmanlike manner, in compliance with all applicable laws., City shall take reasonable steps to perform such work in a manner which results in minimal disruption to Consultant's activities in the Premises. Consultant will take reasonable steps to accommodate City's work. The City shall enforce all applicable third party warranties at the request of Consultant. City shall promptly obtain final certificates of occupancy for all applicable portions of the Premises.

15.9 Renovation Timeline Updates. City shall provide renovation timeline updates to Consultant on a quarterly basis or more frequently upon request. Six months after the commencement of the construction of the improvements detailed in this Agreement, the parties will meet to review whether the renovation timelines stated herein are on track. City shall provide renovation timeline updates to

Consultant on a quarterly basis or more frequently upon request. If, in Consultant's reasonable determination, there is excessive delay in any renovation timelines stated herein, and City is not diligently pursuing completion of the improvements detailed in Section 15.1, 15.2, or 15.3, Consultant may terminate this Agreement upon sixty (60) days' written notice to City.

Palo Alto Animal Shelter
3281 East Bayshore Rd., Palo Alto, CA

Legend
Premises



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200 ft