

AGREEMENT FOR SPECIAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2017, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and the County of Merced, a political subdivision of the State of California, whose address of record is 2222 M Street, Merced, California 95340, (hereinafter referred to as "County").

WHEREAS, City desires to contract with the County for special services which consist of stray animal housing and disposal assistance to the City's designated animal control provider; and

WHEREAS, County is specially trained, experienced, and competent to perform such services in connection with existing facilities upon warrant that the City has the authority to transfer ownership of the animals to County following the legally required holding period; and

WHEREAS, City is prepared to provide a formal release/intake slip acceptable to the Division of Animal Control of Merced County; and

WHEREAS, the parties agree that all released animals are subject to all applicable California State Laws, Title 7 of the Merced County Code, and to all current policies and procedures of the Merced County Division of Animal Control, including adoption and euthanasia; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished;

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

1. SCOPE OF SERVICES. County shall provide housing, handling, securing, transfer and disposition of dogs and cats captured by ordinance or code and delivered by City's designated animal control provider and/or residents of the City of Merced. These services are in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto:

A. City will comply with the following:

- (i). Warrant in writing that City has the authority to transfer the ownership of the animals.
- (ii). Prepare a formal release/intake slip acceptable to Merced County Division of Animal Control for each animal delivered to County including those requiring disposal. For animals that are to be housed by County the formal release/Intake slip must provide information to allow for identification of each animal, the date of original custody, the animal's location when placed in custody, and all relevant information concerning custody, special holds, incidents of injury and attack, microchip identification, claims of ownership and medical treatment.
- (iii). Certify that any animal except those that City identifies on the formal release/intake slip as subject to an administrative hearing or court order, may become the property of County after the required holding period and that County may dispose of the animal at its sole discretion.
- (iv). City may request County carry out any action ordered by the Courts or Administrative Hearing process. City must provide County a copy of the written order before the requested service will be performed. The copy must clearly state the requested action and City's authority to enforce such action. If City elects to carry out the ordered disposition, County will not assist City unless such assistance is requested by City and approved by County. City may cancel any such request at their discretion.
- (v). Accept responsibility for payment of compensation as set forth herein.
- (vi). City shall ensure any injured or sick animal brought to County has received first aid appropriate to the degree of injury/illness or qualified medical care as required by State Law. City will ensure documentation of such treatment is provided to County at the time of the animal intake. Written documentation containing the required treatment information may be attached to the animal's formal release/intake slip to satisfy these requirements. If qualified Medical Care is provided, City shall provide a copy of the medical record, which contains information regarding diagnosis, treatment, any follow up care or any medications required. Employees or agents of City

shall not leave any injured or sick animal at County's facility without first providing qualified medical care as required by §597.1(C)(1) of the California Penal Code.

- (vii). City shall comply with County's established shelter intake policies and procedures. City will be notified in writing of any changes to this intake policy or procedure. It is City's responsibility to notify County of any circumstance that prevents City from following County's intake policy or procedure.
 - (viii). City will check each animal brought to County for microchip identification, license, ID tag, tattoo, or other types of animal identification. City is responsible for making a reasonable effort to contact the owner of any such animal and advise them of the animal's location and status. City shall make an annotation of this effort on the formal release/intake form. Animals, which pose a serious threat of personal injury, are exempt from this requirement. An annotation must be made on the intake/release card to notify County that the check has not been accomplished.
 - (ix). City is responsible for removing any Special holds placed on Animals by City. Verbal or electronic communication of the hold removal is acceptable. Additional fees may be incurred subject to the terms and conditions outlined in Section C, "FEES," of this Agreement.
 - (x). City is responsible for compliance of applicable State Law, Code or regulation regarding the humane transport or treatment of an animal while it is in their care, custody or control.
- B. County will provide services after compliance with the following:
- (i). Services will be provided for cats and dogs identified as stray animals with a formal release/intake slip.
 - (ii). Animals other than cats or dogs will be accepted at the sole discretion of County and based on County's ability to provide adequate housing, and or humane confinement. County must approve any such request for service before the animal is delivered, if such request is made during normal business hours.

After County's normal business hours, City will be notified of County's inability to provide adequate housing, and or humane confinement of the animal, by the next business day. City will be given a reasonable amount time not to exceed two (2) business days to relocate the animal if required. Additional relocation time may be granted by County on a case-by-case basis. Any animals not relocated will be subject to the terms and conditions outlined in Section C.1 of this Agreement.

- (iii). County reserves the right to refuse service to City, if in its sole opinion County is unable to provide adequate care, housing or humane confinement for any animal brought to County by City.
- (iv). If in the sole opinion of County, any sick/injured animal left by City has not received qualified medical care under the terms of this agreement, such care will be provided without consultation with City. However, all such care shall be provided by a City-contracted provider. City will be responsible for, and billed directly by the City-contracted provider(s) for, all costs associated with this service and any required follow up care, in addition to normal compensation paid by City for each unclaimed stray animal. However, if the County does not use a City-contracted provider for such care, the County shall be responsible for all costs or charges relating to such care. City shall provide County with a list of City-contracted providers, and any changes to that list, before County will be responsible for any charges related to the failure to use a City-contracted provider. If any animal is left with an injury or illness, which has been treated, and the condition is such that it would not be in the best interest of the animal to remain in County's facility, the animal will not be accepted by County.
- (v). County will not perform euthanasia services for any injured/sick animal brought in by City without a signed formal release slip which indicates the reason for the euthanasia. During normal business hours City must notify County of the need for euthanasia services and shall not leave the animal unless it has been accepted by County. Under no circumstances will any injured or sick animal requiring euthanasia be left in County's facility after hours. Verbal authorization for euthanasia will not be accepted unless in the sole opinion of County the animal is experiencing irremediable suffering as defined in

§17006 of the Food and Agricultural Code. If the animal is not experiencing irremediable suffering, County will not accept any such animal and City will be responsible for its disposition. Under no circumstances will County provide to City any controlled substance or medication unless prescribed or approved by County's contract veterinarian.

- (vi). County will not accept any animal found within the city limits of Merced directly from a citizen of the City of Merced, until County has contacted City and obtained an incident number relating to the animal.

C. FEES.

- (i). County will charge actual cost to City for all services provided for animals requiring special handling, housing or care.
- (ii). City occasionally places a special hold on animals for rabies quarantine, which does not exceed ten (10) days in duration. For animals housed under this type of special hold, County agrees to charge City a standard per animal fee. If the holding period is extended at the request of City, County will charge City the established daily board fee per animal for each day beyond the initial ten (10) day period.
- (iii). If City requests an animal be held by County for a purpose other than rabies quarantine, County will charge City the applicable daily board fee per animal, held beyond County's minimum holding period of four (4) days. Under the terms of this Agreement, City is responsible for notifying County that the hold is no longer necessary. Unless County fault is mutually established, all fees will continue to accrue until such notification is made.
- (iv). County will charge City for all fees associated with any service County provides under the terms of this Agreement which are the responsibility of City. Any fee so charged will be at the established rate for any such service listed on County's current fee schedule.
- (v). If City provides County with proof of ownership and verifiable owner information, or if the animal has a microchip with verifiable owner

information, County will recover all costs incurred for the housing and care of the animal from the owner.

- (vi). In the event any City animal is ordered returned to the owner at no charge either by City, court order or administrative hearing, City shall be responsible for all fees incurred by County.
- (vii). On all invoices to the City, County shall include the incident number, location where each animal was placed in custody, and the age or estimated age of each animal. The failure to include this information on an invoice will not relieve the City of responsibility to pay the invoice for an animal found within the city limits of Merced so long as the City can confirm that the animal was found within the city limits of Merced.

2. TERM. The term of this Agreement shall be three (3) years, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CAUSE," "TERMINATION AT WILL" OR NON-APPROPRIATION OF FUNDING," as set forth elsewhere in this Agreement.

3. COMPENSATION.

A. City agrees to pay County:

- (i). \$85.00 per each live animal, eight (8) weeks of age or older for the first four (4) days of housing. In the case of a rabies quarantine, ten (10) days of housing.
- (ii). \$75.00 per animal for euthanasia services requested by City.
- (iii). \$10.00 per litter, where the animals are less than eight (8) weeks of age and housed less than two (2) days.
- (iv). \$10.00 per deceased animal brought to County for disposal.
- (v). Any additional costs defined under the terms of this Agreement.

B. No fee will be assessed for:

- (i). Animals redeemed or released by their owners after payment of costs.

- (ii). Animals which have been designated as escaped or missing by COUNTY which have been housed less than two (2) days.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of County and be mailed to County at:

Merced County Animal Control
2150 Shuttle Drive
Atwater, CA 95301

County may request that City mail the check to such other address as County may from time to time designate to City. Such request must be made in writing.

4. TERMS OF PAYMENT. Payment shall be for services provided and at the rate per animal as set forth herein. County shall submit monthly invoices for the services provided and the amount owed under this Agreement. By invoice or approved alternate documentation County will charge for the number of animals received to County control and the amount due. County will provide the incident number, the location where each animal was placed in custody, and the age or estimated age of each animal on their invoices/documentation to City. County will provide any additional information needed by City as notice of the need for payment in addition to the per animal charge. The fee due hereunder shall be paid to County within thirty (30) days following receipt of the invoice.

5. NOTICES. All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.

B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return

receipt.

D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o	City of Merced c/o
Division of Animal Control	Merced Police Department
2150 Shuttle Drive	611 W. 22 nd Street
Atwater, CA 95301	Merced, CA 95340
Ph 209-385-7436	Ph 209-385-6915
Fax 209-722-3627	Fax 209-385-8800

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

6. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING. The services provided to City pursuant to this Agreement are based on County's continued receipt of local, state and/or federal funding related to this purpose. In the event that funding is terminated, in whole or in part, for any reason, this Agreement and all obligations for services by the County arising from this Agreement shall be discharged. County agrees to inform City no later than ten (10) calendar days after receiving notification that funding will be terminated and

the final date for which services may be available.

7. **TERMINATION AT WILL.** This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination. Upon effective date of termination, County shall have no further liability for the provision of services.

8. **TERMINATION FOR CAUSE.** If City materially defaults in the performance of or repeatedly fails to comply with any of its obligations under this Agreement, or otherwise breaches this Agreement ("Default"), County may, in addition to any other remedies it may have, provide City with written notice of Default specifying the provision(s) or term(s) of this Agreement that relate to the Default and/or lack of compliance. County's written notice of Default shall provide fifteen (15) calendar days from the date of proper mailing of such notice allowing for full and satisfactory correction of default or full compliance. Should City thereafter fail to proceed with all reasonable diligence to fully cure the Default, County may terminate this Agreement for cause by giving five (5) calendar days written notice. In the event of any proceeding by or against the City, including, but not limited to, bankruptcy, insolvency, appointment of a receiver or trustee, or an assignment for the benefit of creditors, County may exercise at its election its right of termination under this Section.

9. **COMPENSATION AND LIABILITY FOR DAMAGES UPON TERMINATION.** County shall be entitled to receive compensation for any work completed prior to issuance of the notice of termination. Neither party, however, shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of this Agreement, regardless of whether this Agreement was terminated at will or for cause.

10. **MODIFICATION OF THE AGREEMENT.** Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

11. **INSURANCE.**

A. City shall provide a certificate of insurance and endorsements naming

County as an additional insured on each policy guaranteeing such primary coverage to the County. The insurance carrier shall be required to give County notice of termination at least 10 days prior to the intended termination of any specified policy. Each certificate of insurance shall specify if CITY has a Self Insured Retention (SIR), and if so, City shall be required to provide the entire policy of insurance with which it has a SIR.

- (i). Commercial General Liability: \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering bodily injury, personal injury and property damage. The COUNTY and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
- (ii). Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or split limits of \$500,000 per person \$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage.
- (iii). Workers Compensation: Statutory coverage, if and as required for City as an employer according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
- (iv). Professional Liability: \$1,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering City's wrongful acts, errors and omissions.

B. Insurance Conditions.

- (i). Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A: VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.
- (ii). Each of the above required policies shall be endorsed to provide County with thirty (30) days prior written notice of cancellation. County is not liable for the payment of premiums or assessments on

the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of City to furnish insurance during the term of this Agreement.

- (iii). Self-insurance by a government entity that provides for coverage in excess of the amounts indicated in this section will satisfy this requirement when a certificate of self-insurance is provided.

12. INDEMNIFICATION. City shall indemnify, defend and hold harmless the County, its governing board, board members, supervisors, officers, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, liabilities or losses arise from the negligence or willful acts or omissions of City, its officers, employees or agents.

Except as related to liability involving misidentification or failure to identify ownership of animals, County shall indemnify, defend and hold harmless City, its governing board, board members, officers, employees and agents, from and against any claims, damages, costs, expenses, including any amount equal to reasonable attorney's fees, or liabilities arising out of or in any way connected with this Agreement, including, without limitation, claims damages, expenses, or liabilities for loss or damage to any property, or for death or injury to any person or persons in proportion to and to the extent that such claims, damages, expenses, liabilities or losses arise from the negligence or willful acts or omissions of County, its officers, employees or agents. Incidents related to ownership and initial capture of animals shall remain the full responsibility of City. Unless the fault or defect is the sole responsibility of County and its employees, City shall retain full responsibility relating to transfer of the animals until the animal is received and identified by County.

13. INDEPENDENT CONTRACTOR. It is mutually understood and agreed that each party is an independent entity in the performance of the work duties and obligations devolving upon them under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which City shall receive and use the services provided. The sole interest and responsibility of each party is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and each party shall be responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to themselves, or their employees, if any.

It is mutually agreed and understood that City, its sub-contractors and employees, if any, shall have no claim under this Agreement or otherwise against County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

City shall insure that all its personnel and employees, its sub-contractors and their employees, used to receive the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

14. RECORDS AND INSPECTIONS. Each party shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, each party shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

15. OWNERSHIP OF DOCUMENTS. To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by County hereunder shall be the exclusive property of County and shall be delivered to County upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. City may retain copies thereof for its files and internal use. Any publication of the information directly derived from work performed, or data obtained in connection with services rendered under this Agreement, must first be approved in writing by County. All technical data, evaluations, plans, specifications, reports, and other work products are instruments of County's services and are not designed for use other than what is intended by this Agreement.

16. ENTIRE AGREEMENT. This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

17. COUNTY NOT OBLIGATED TO THIRD PARTIES. County shall not be obligated or liable hereunder to any party other than City.

18. COMPLIANCE WITH STATE LAWS AND REGULATIONS. The parties agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, animal services or control, and all other matters applicable to the parties, their sub grantees, contractors, or subcontractors, and their work.

19. APPLICABLE LAW; VENUE. All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

20. WAIVER. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

21. BREACH OF CONTRACT. Upon breach of this Agreement by either party, City and County shall have all remedies available to them both in equity and/or at law.

22. SUCCESSORS IN INTEREST. All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This

paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

23. CONFLICT OF INTEREST. City covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. City shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors, and the County. City shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables them to influence this Agreement, shall have any direct or indirect financial interest resulting from this Agreement or shall have any relationship to City or their officer or employee nor that any such person will be employed by City in the performance of this Agreement without immediate divulgence of such fact to the County.

24. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES. The parties and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of the other party because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Each party shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of the other party's employees and agents, and recipients of services are free from such discrimination and harassment.

The parties represent that they are in compliance with and agree that they will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto. The parties shall include this nondiscrimination provision in all subcontracts related to this Agreement.

25. CAPTIONS. The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

26. ASSIGNMENT. The parties shall not assign this Agreement, or any

part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent of the other party.

27. SEVERABILITY. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Reduced compensation will allow County to withdraw from any service obligation.

28. DUPLICATE COUNTERPARTS. This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

29. DISPUTES. In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

30. LICENSE AND PERMITS. City shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

(Signatures on following two pages.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  9-28-2017
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

COUNTY OF MERCED

By _____
Chair - Board of Supervisors

ATTEST:

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: WA Ly 9/26/17
County Counsel Date