

CITY OF CHULA VISTA
AGREEMENT WITH [CITY OF NATIONAL CITY]
TO PROVIDE [ANIMAL SHELTER SERVICES]

This Agreement is entered into effective as of July 1, 2024 (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation (“City”) and CITY OF NATIONAL CITY, [a California municipal corporation] (“National City”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

RECITALS

WHEREAS, [City owns and operates an animal care facility, located at 130 Beyer Way, Chula Vista, California and provides a full range of animal control services to the citizens of Chula Vista]; and

WHEREAS, on June 16, 2020, National City entered into an agreement of up to four (4) years with City for City to provide animal shelter services for the impounding, adoption, redemption, and the care and disposition of dogs, cats, and other small animals; and

WHEREAS, National City desires to enter into a new agreement with City, for City to continue to provide animal shelter services for the impounding, adoption, redemption, and the care and disposition of dogs, cats, and other small animals; and

WHEREAS, City has the authority to enter into contracts with other agencies to provide such services.

OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and National City hereby agree as follows:

1. TERM

1.1 Term. This Agreement shall commence on the Effective Date and shall terminate, subject to Sections 8.1 and 8.2 of this Agreement, one (1) year after the Effective Date; provided, however, provisions which expressly survive termination shall remain in effect. This Agreement may be extended in accordance with Exhibit A, Section 5.

2. SERVICES

2.1 Services. City shall provide general animal shelter, and related administrative services to the residents of National City to the extent and in the manner set forth herein.

A. Shelter Services. City shall provide the shelter services (“Shelter Services”) to the residents of National City in the manner and type described below:

(1) **Shelter Location**. Shelter Services shall be provided at the facility located in the City of Chula Vista at 130 Beyer Way (“Facility”).

(2) **Hours of Operation.** The Facility hours are 10:00am to 5:00pm, Tuesday through Friday, and 10:00am to 4:00pm on Saturday, and the Facility is closed daily from 12pm to 1pm. The Facility is closed on Sunday, Monday, and all major holidays.

a. City shall notify National City of changes to Facility hours in advance of such changes.

(3) **Types of Services.**

a. Strays. City shall accept strays at no charge to the National City residents.

b. Relinquishing Animals. National City residents may relinquish owned animals to the facility for euthanasia or adoption as space allows. There is a fee to the customer for the service.

c. Redeeming Animals. National City residents may redeem animals from the facility.

d. Holding. City agrees to hold all dogs and cats for the minimum holding period required by the California Food and Agricultural Code and other applicable state law. In accordance with applicable state code sections, animals with communicable diseases and severe injuries or illness may be euthanized prior to the expiration of the normal holding period. Veterinary medical care will be provided as needed for all impounded animals for the duration of their hold period as needed. City will attempt to notify owners of identified animals that their animal is in the custody of the City Animal Care Facility and advise them of the holding period. National City shall relinquish all animals held in the Facility and not claimed or adopted to City for disposition in accordance with all applicable laws, policies, or procedures as deemed appropriate by the City Animal Care Facility Administrator. Upon payment of all appropriate fees, City will release to the legal owner, any impounded domestic animal. City will have sole discretion, without recourse to National City, to release animals under special circumstances regardless of payment of fees.

i. No Medical Research. City will not sell or give any live animal to a medical research facility at any time or from any jurisdiction.

e. Spaying and Neutering. City will ensure all dogs, cats, and rabbits adopted from the shelter are spayed or neutered at the time of adoption. Additionally, the City will provide the public with low-cost spay/neuter information and assistance. This service is made possible through grants and donations as available.

f. Maintenance of Facility. City shall maintain its Facility in a humane manner and shall keep its Facility in a sanitary condition at all times. All services furnished by City shall be provided in accordance with local laws and the laws of the State of California. City shall use humane methods in the care, euthanizing, and disposition of any animal coming under its jurisdiction.

B. Administrative Services. City shall provide the following administrative services.

- (1) **Meetings.** City will provide a representative to attend National City meetings that involve animal shelter issues upon request and with reasonable advance notice.
- (2) **Meet and Confer.** Representatives from both Parties will meet in good faith regarding operational issues associated with the administration of this Agreement.
- (3) **Reports.** City will provide monthly reports to National City, upon request. These reports will include the number of impounds, redemptions, euthanasians, service responses, and adoptions.
- (4) **Notification.** City shall notify National City of the nature, circumstances, and status of major incidents. City will also provide, if requested, copies of all supporting documents and information involving the incident. National City will provide a list of its designated city officials to City and the recommended methods to contact the designated individuals.
- (5) **Testimony.** When requested by National City, and at an additional cost, City shall make its employees and/or other percipient witness under its control, available for any challenge stemming from the services provided herein (including but not limited to Municipal Code citations) as needed to testify in a court of law, administrative or other proceeding. This duty shall survive the termination of this Agreement.
- (6) **Training.**
 - a. **Two Week Training.** Upon National City's request, the City may agree to train incoming National City Animal Regulations Officers ("AROs") for a period of two (2) weeks. Training will include daily ride-alongs with City Animal Control Officer(s). Prior to commencing training, National City shall pay City a training fee of \$2,000 per ARO.
 - b. **Two Hour Training.** Upon National City's request, the City may agree to have a City Animal Control Officer conduct a two-hour one-on-one training session for incoming National City AROs. Training will not include a ride along with City Animal Control Officer(s). Prior to commencing training, National City shall pay City a training fee of \$75 per ARO.

3. EXCLUDED SERVICES

3.1 **General.** The following services are not included in the scope of services covered under this Agreement.

A. **Indigenous Animals.** City will not trap skunks, opossums or other indigenous small animals for the purpose of nuisance control. Wildlife will only be handled for purposes of public safety or for humane reasons. Cat traps will be provided and monitored by National City.

B. **Dead and Injured Animals.** Dead animals on private property are the responsibility of the property owner. Sick or injured animals are the responsibility of the animal owner.

C. **Licensing.** All dog licensing services will be provided and monitored by National City.

4. NATIONAL CITY OBLIGATIONS

4.1 Payment. National City shall pay the City the following amounts in the manner set forth herein.

A. Monthly Payments. Commencing on July 1, 2024 National City agrees to pay City \$41,638 per month for FY 2024/2025 (July 1, 2024- June 30, 2025). If National City only maintains one (1) permanent full time Animal Regulation Officer on its workforce, National City may notify the City and receive a 15% reduction in monthly payments.

(1) **Invoices and Payment Date**. The City shall submit quarterly billing to National City the month following the billing period and that amount shall be due and payable within thirty (30) calendar days of the invoice date.

(2) **Redemption Fees**. Monthly payments shall be reduced by any redemption fees collected under this Agreement.

B. Contract Extension Pricing. Pricing for each subsequent fiscal year and contract extensions shall be based on an average of animal intakes from the preceding three (3) calendar years. Pricing cannot increase or decrease by more than 5% from the prior year.

(1) No later than April 30 each year, the City will notify National City of the actual animal intakes for the preceding calendar year, and the proposed contract pricing for the upcoming fiscal year.

(2) If National City desires to extend the term, it shall notify City in writing no later than May 31 of each year that it accepts the proposed contract pricing for the upcoming fiscal year in accordance with Exhibit A, Section 5.

C. Cat and Dog Spay/Neuter Clinics. As long as the Facility receives grants and donations for monthly low cost spay/neuter clinics, the City will provide this service at no cost to National City. If grants/donations do not cover monthly clinics National City will pay \$1,500 per clinic up to four (4) clinics per year.

4.2 Support Services.

A. Provision of Data. National City shall provide City with a current listing of all animal licenses issued, including permits or licenses for dogs, cats, dangerous dogs or animals, exotic animals, kennels, pet shops, ranches or farms, dog shows, obedience trials, and circuses.

B. Notice of Scheduled Meetings. National City shall notify City at least seventy-two (72) hours in advance of any animal-related issues, which are anticipated to be scheduled on an agenda for the City Council or any legislative or administrative body of National City when City employees will be required to appear.

C. Police Services. National City shall provide all required police services within National City, including providing police backup upon request of a City Animal Control Officer. Nothing in this Agreement shall impose a duty on the City or City's Animal Control Officers to provide any services within the boundaries of the City of National City.

D. Legal Representation. Notwithstanding any contrary provision in this Agreement, National City will provide legal representation at its sole cost and expense in cases of public nuisance, dangerous and potentially dangerous animal cases, and for lawsuits, claims, or litigation pertaining to those cases which are based upon or arise from the actions of National City including its Animal Regulation officers and employees.

5. FEES

5.1. Fees Charged to National City Residents. National City residents shall be required to pay fees for certain services provided for Animal Care by the City.

A. Relinquishment, Redemption, and Services. Fees for relinquishment, redemption, and other services provided will be charged in accordance with City's master fee schedule unless otherwise agreed to separately in writing with National City.

5.2. Fee Updates. Periodically, City may update fees to account for increased costs. As new fees are adopted, for the purpose of this Agreement, such fees shall replace existing fees.

6. INDEMNIFICATION

6.1. National City Duty to Indemnify City. National City shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, agents, and volunteers, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons in any manner arising out of, related to, or in connection with the destruction of any animal delivered to and accepted by the Animal Care Facility from National City residents. In addition, this indemnity provision shall cover any alleged acts, omissions, negligence, or willful misconduct of National City, its officials, officers, employees, agents, and volunteers. This indemnity provision, however, does not include any claims, damages, liability, costs and expenses (including without limitations, attorney's fees) arising from the sole negligence or sole willful misconduct of the City, its officers, employees, agents, and volunteers.

6.2. City duty to Indemnify National City. City shall indemnify and hold National City, its elected officials, employees, officers, agents and representatives harmless for any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the City, or its employees, agents, and officers, arising out of any services performed under this Agreement. City's duty to defend and indemnify shall not extend to any claims or liabilities arising from the sole negligence or sole willful misconduct of National City, its agents, officers or employees.

6.3 Costs of Defense and Award. Included in the obligations in Sections 6.1 and 6.2, above, is the Indemnitor's obligation to defend, at Indemnitor's own cost, expense and risk, any and all aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Indemnitee, its directors, officials, officers, employees, agents and/or volunteers. Indemnitor shall pay and satisfy any judgment, award or decree that may be rendered against Indemnitee, its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expense and cost incurred by each of them in connection therewith.

6.4. Obligations Not Limited or Modified. Indemnitor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnitee, its directors, officials, officers, employees, agents, and/or volunteers.

6.5. Enforcement Costs. Indemnitor shall pay any and all costs Indemnitee incurs enforcing the indemnity and defense provisions set forth in Section 6.

6.6 Survival. Indemnitor's obligations under Section 6 shall survive the termination of this Agreement.

7. FORCE MAJEURE

7.1 Definition. An Event of Force Majeure means an occurrence beyond the control and without the fault or negligence of a Party, including but not limited to unusually severe weather, flood, earthquake, fire, lightning, and other natural catastrophes, acts of God or the public enemy, war, terrorist act, riot, insurrection, civil disturbance or disobedience, strike, labor dispute, road impediments, expropriation or confiscation of facilities, changes of applicable law, laws or orders related to pandemics, such as COVID-19, or sabotage of facilities, so long as such Party makes good faith and reasonable efforts to remedy the delays or failures in performance caused thereby.

7.2 Force Majeure. The Parties shall be excused for any delay or failure to perform its duties and obligations under this Agreement to the extent that such failure or delay is caused by an Event of Force Majeure as set forth in Section 7.1. Delay or failure in performance by a Party which is the result of an Event of Force Majeure set forth in Section 7.1 shall be deemed excused for a period no longer than the delay or failure in performance caused by such Event.

City reserves the right, at its sole discretion, to temporarily suspend, change and resume the type and frequency of services provided to comply with Federal, State, County and City laws or orders in response to an Event of Force Majeure. Examples of changed or limited services include but are not limited to closing the shelter to the public or offering essential services by appointment only, such as identifying a lost pet, and suspending in-person services such as vaccinations, licensing, owner surrenders, microchipping, trap rental, and spay-neuter services. Resources and staffing allowing, City will make reasonable efforts to educate the public of service changes through its webpage and social media platforms, as well as to provide services such as adoptions and licensing through its website or by email.

7.3 Notice. Each party shall give written notice to the other party as soon after becoming aware of the delay or failure in performance caused by an Event of Force Majeure as is reasonably possible, but in any event within five (5) working days after the party becomes aware of such delay or failure.

7.4 No Adjustments. No Event of Force Majeure shall be a basis for monetary adjustment to amounts payable under this Agreement.

8. TERMINATION

8.1 Termination for Cause. If, through any cause, either party shall substantially fail to fulfill in a timely and proper manner any obligation under this Agreement, or violate any of its covenants, agreements or conditions, the Party not in breach shall have the right to terminate this Agreement by giving written notification of such termination and specifying the effective date thereof at least five (5) days before termination. If the Agreement is terminated by National City as provided for in this paragraph, City shall be entitled to receive just and equitable compensation for all services performed prior to the effective date of

such termination, and the payments shall be prorated should the effective date of termination not end on the last day of the month. If the Agreement is terminated by the City as provided for in this paragraph, National City shall be entitled to continue to receive services under this Agreement up until the effective date of such termination.

8.2 Termination for Convenience. Either Party may terminate this Agreement at any time and for any reason, by giving specific written notice of such termination and specifying the effective date thereof at least ninety (90) days before the effective date of such termination. If the Agreement is terminated by National City as provided for in this paragraph, City shall be entitled to receive just and equitable compensation for all services performed prior to the effective date of such termination and the payments shall be prorated if the effective date of termination not be on the last day of the month. If the Agreement is terminated by the City as provided for in this paragraph, National City shall be entitled to continue to receive services under this Agreement up until the effective date of such termination.

9. GENERAL PROVISIONS

9.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties. All prior negotiations and agreements are merged into this Agreement.

9.2 Assignment. This Agreement or any right or privilege hereunder shall not be assigned to another by any Party without the express written consent of the other Party. Consent to an assignment shall not be deemed to be consent to any subsequent assignment. Any such assignment without such consent shall be void.

9.3 Authority. The person(s) executing this Agreement for the Parties warrants and represents that they have the authority to execute same on behalf of each Party and to bind each respective Party to its obligations hereunder without any further action or direction from any board, principle or officer thereof.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

9.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All recitals and exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

9.6 Good Faith. The Parties promise to use their best efforts to satisfy all conditions to this Agreement and to take all further steps and execute all further documents reasonably necessary to put this Agreement into effect. Both Parties agree to meet and confer in good faith regarding operational matters upon request.

9.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

9.8 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

9.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

9.10 Electronic Signatures. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

9.11 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

9.12 Reference to Sections. Each reference in this Agreement to a section refers, unless otherwise stated, to a section in this Agreement.

9.13 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or National City shall be deemed to be both covenants and conditions.

9.14 Severability. In the event that any phrase, clause, paragraph, section or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining portions of this Agreement shall not be affected and shall remain in force and effect to the fullest extent permitted by law.

9.15 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibits, the exhibit of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

9.16 Compliance with Law. The Parties shall, at their sole cost and expense, comply with all the requirements of municipal, state, and federal authorities now in effect or which may hereafter be in effect related to this Agreement.

9.17 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement, against either Party, unless a claim has first been presented in writing, filed with and acted upon by the alleged offending Party in accordance with the procedures set forth in its respective Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by each Party in the implementation of same. Upon request by either Party, the Parties shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this Agreement

9.18 Fees. In the event any action or proceeding shall be instituted in connection with this Agreement, including without limitation the enforcement of any indemnification obligation contained herein, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted.

9.19 Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance hereunder, shall be the City of Chula Vista.

9.20 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

9.21 No Waiver. No failure of either Party to insist upon the strict performance by the other Party of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any default hereunder shall be implied from any omission to take any action on account of such default. The consent or approval to or of any act requiring consent or approval shall not be deemed to waive or render unnecessary future consent or approval for any subsequent similar acts. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

9.22 Additional Rights. No rights other than those specifically identified herein shall be implied from this Agreement.

9.23 Cumulative Remedies. All rights, options, and remedies contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and each Party shall have the right to pursue any one or all of such remedies or to seek damages or specific performance in the event of any breach of the terms hereof or to pursue any other remedy or relief which may be provided by law or equity, whether or not stated in this Agreement.

9.24 Independent Contractor. Unless otherwise stated in this Agreement, all persons employed in the performance of services and functions for National City under this Agreement shall be City employees, agents, or contractors thereof. No National City employee shall perform services or functions that City is obligated to provide under this Agreement. All City employees who are employed by City to perform the services pursuant to this Agreement shall be entitled solely to the rights and privileges given to City employees and shall not be entitled, as a result of providing services pursuant to this Agreement, to any additional rights and privileges given to National City employees. National City shall not be liable for the direct payment of any salaries, wages, or the compensation to City personnel, agents, or contractors performing services pursuant to this Agreement, or any liability other than that provided for in this Agreement. Unless specified otherwise, National City shall not be liable for compensation or indemnity to any City employee, agent, or contractor for injury or sickness or any other claims arising out of his or her employment. City is an independent contractor, and no agency relationship, either expressed or implied, is created by the execution of this Agreement.

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**SIGNATURE PAGE
TO
CITY OF CHULA VISTA AGREEMENT
WITH
CITY OF NATIONAL CITY
TO PROVIDE ANIMAL SHELTER SERVICES**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and National City agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

CITY OF NATIONAL CITY

CITY OF CHULA VISTA

BY: _____
BEN MARTINEZ |
CITY MANAGER |

BY: _____
MARIA KACHADOORIAN |
CITY MANAGER |

||

APPROVED AS TO FORM

APPROVED AS TO FORM

BY: _____
BARRY J. SCHULTZ
CITY ATTORNEY

BY: _____
MARCO A. VERDUGO
CITY ATTORNEY

EXHIBIT A
NOTICES AND ADDITIONAL TERMS

1. Contact People for Contract Administration and Legal Notice:

A. CITY OF CHULA VISTA
City Manager, or designee
276 Fourth Avenue
Chula Vista, CA 91910

For Legal Notice Copy to:
City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

B. CITY OF NATIONAL CITY
City Manager, and his/her designee
1243 National City Blvd
National City, CA 91950

For Legal Notice Copy to:
City of National City
City Attorney
1243 National City Blvd, National City, CA 91950
619-336-4220
attorney@nationalcityca.gov

Changes. If the Administrator, designee or address of either party changes, notice of the change shall be sent to the other party. After the receipt of the notice of change, all future notices or demands shall be sent to the new contact for notices indicated by the notice of change.

2. Reserved

3. Term: In accordance with Section 1.1 of this Agreement, the term of this Agreement shall begin [July 1, 2024] and end on [June 30, 2025], subject to extension as set forth in Section 5 below.

4. Reserved

5. Special Provisions:

Notwithstanding the completion date set forth in Section 3 above, the Parties may extend this Agreement for four (4) additional terms, defined as a one-year increment, for a total Agreement duration of five (5) years. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the Parties exercise an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 of the Agreement may be increased in

accordance with Agreement Section 4.1.B. for each extension. National City shall give written notice to City of its election to exercise the extension at least thirty (30) days prior to the expiration of the term.