

**AGREEMENT BETWEEN CITY OF CHULA VISTA AND  
CITY OF NATIONAL CITY  
PROVIDING ANIMAL SHELTER SERVICES**

This agreement ("Agreement"), dated June 16, 2020 for reference purposes only, and effective as of the date last executed is between the City of Chula Vista, ("City"), a chartered municipal corporation of the State of California, and the City of National City ("National City"), a municipal corporation of the State of California. The City of National City may be referred to herein individually as "Party" and the City of Chula Vista and the City of National City may be referred to herein collectively as "Parties." This Agreement is made 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**, National City desires to enter into an agreement with City, whereby City will 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.

**NOW, THEREFORE**, in consideration of their mutual promises, and other good and valuable consideration, the Parties hereto do hereby agree as follows:

**ARTICLE I. TERM**

1.1 **Term.** This Agreement shall be for a one (1) year term commencing on July 1, 2020.

(A) *Options to Extend.* Parties may extend the Agreement for three (3) additional one (1) year terms.

(B) *Notice.* National City shall provide written notice to City at least sixty (60) calendar days, but no more than ninety (90) calendar days, prior to the expiration of the term of this Agreement expressing its intent to exercise an option to extend this Agreement.

**ARTICLE II. SCOPE OF SERVICES**

2.1 **General 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 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.

(2) **Hours of Operation.** The facility hours are currently 10:00am to 5:00pm, Tuesday through Friday, and 10:00am to 4:00pm on Saturday. The facility will be closed on Sunday, Monday, and all major holidays.

(a) Changes in Hours of Operation. 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. As per 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 to City for disposition in accordance with all applicable laws, policies or procedures as deemed appropriate by the City Animal Care Facility Administrator all animals held in the animal care facility and not claimed or adopted. Upon payment of all appropriate fees, City will release to the legal owner, any impounded domestic animal. City will have 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 Animal Care Facility 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.
- (C) *Administrative Services.* City shall provide the following administrative services.
- (1) **Meetings.** City will provide a representative to attend any National City meetings that involve animal shelter issues upon request and with reasonable notice.
  - (2) **Meet and Confer.** A City representative will meet and confer in good faith with a National City administrator over 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, euthanizations, service responses, and adoptions.
  - (4) **Notification.** City shall establish a notification policy for its officers with the assistance of National City officials. The policy shall identify the types of incidents for which City Animal Control will be required to notify designated National City officials. Notification shall include the nature, circumstances, and status of the incident 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.

### ARTICLE III. EXCLUDED SERVICES

- 3.1 **Excluded Services.** 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 and/or cat licensing will be provided and monitored by National City.

### ARTICLE IV. NATIONAL CITY OBLIGATIONS

- 4.1 **Payment.** National City shall pay the City the following in the amount and manner set forth herein.
- (A) *Monthly Payments.* Commencing on July 1, 2020 National City agrees to pay City \$36,194 per month for FY 2020/2021 (July 1, 2020- June 30, 2021).
    - (1) **Invoices and Payment Date.** The City Finance Office shall submit quarterly billing to National City on or before the 15th day of 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) **Pricing of Contract Extensions.** 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 execute an option to extend, 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 and, thereby, executes an option to extend the contract for a one (1) year term.

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

#### 4.3 **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 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.

(D) *Legal Representation.* National City will provide legal representation 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 Control officers and employees.

### ARTICLE V. FEES

5.1 **Fees Charged 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 Provided.* Fees 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.** On occasion, City may be required to update fees to account for increased costs. As new fees are adopted, for the purpose of this Agreement, such fees shall replace those currently in effect.

## ARTICLE VI. INDEMNITY

- 6.1 **National City to Indemnify.** 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, attorneys 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.** 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 **Insurance Proceeds.** 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 Article VI.
- 6.6 **Survival.** Indemnitor's obligations under Article VI shall survive the termination of this Agreement.

## ARTICLE VII. 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.

## ARTICLE VIII. TERMINATION OF AGREEMENT

- 8.1 **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 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 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.

## ARTICLE IX. NOTICES

- 9.1 **Method of Notification.** All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid, addressed to the Administrator, or his/her designee, designated below for the respective party.
- 9.2 **Designation and Contact Information.** The following, including their respective addresses, are hereby designated as Administrators for the purposes of this Agreement only:
- (A) City of Chula Vista  
Deputy City Manager, and/or his/her designee  
276 Fourth Avenue  
Chula Vista, CA 91910
  - (B) City National City  
City Manager, and his/her designee  
1243 National City Blvd  
National City, CA 91950



- 9.3 **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 as required by the notice of change.

## ARTICLE X. MISCELLANEOUS PROVISIONS

- 10.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 10.2 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.
- 10.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section this Agreement.
- 10.4 **Incorporation of Recitals and Exhibits.** All recitals herein and exhibits attached hereto are incorporated into this Agreement and are made a part hereof.
- 10.5 **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.
- 10.6 **Integration.** This Agreement and any exhibits or references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 10.7 **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.
- 10.8 **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.

- 10.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibits, the main body 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.
- 10.10 **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.
- 10.11 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. This Agreement shall be deemed made and entered into in San Diego County, California.
- 10.12 **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
- 10.13 **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.
- 10.14 **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.

- 10.15 **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.
- 10.16 **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 City. Consent to an assignment shall not be deemed to be consent to any subsequent assignment. Any such assignment without such consent shall be void.
- 10.17 **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.
- 10.18 **Additional Rights.** No rights other than those specifically identified herein shall be implied from this Agreement.
- 10.19 **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.
- 10.20 **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.

- 10.21 **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 with City's Animal Care Facility Administrator regarding operational matters upon request.
- 10.22 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[Signature Page Follows]

**SIGNATURE PAGE TO  
AGREEMENT BETWEEN CITY OF CHULA VISTA AND  
CITY OF NATIONAL CITY  
PROVIDING ANIMAL CARE SERVICES**

**CITY OF CHULA VISTA**

Date:

Approved as to form:

\_\_\_\_\_  
Glen Googins  
City Attorney

\_\_\_\_\_  
Maria Kachadoorian  
City Manager

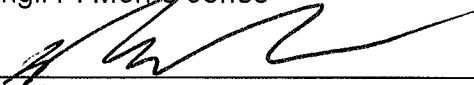
Attest:

\_\_\_\_\_  
Kerry Bigelow  
City Clerk

**CITY OF NATIONAL CITY**


Date:

Approved as to form:  
Angil P. Morris Jones



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Nicole Pedone  
Senior Assistant City Attorney



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Brad Raulston  
City Manager

Attest:



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Mike Dalla  
City Clerk